

STATE WATER RESOURCES CONTROL BOARD

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WATER RIGHTS HEARING ON APPLICATION 30532
FILED BY THE MONTEREY COUNTY WATER RESOURCES AGENCY
NACIMIENTO RIVER, SAN LUIS OBISPO COUNTY

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HELD AT

BONDERSON BUILDING
901 P STREET
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 25, 2000
9:00 A.M.

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Reported by:

ESTHER F. WIATRE
CSR NO. 1564

CAPITOL REPORTERS (916) 923-5447

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SACRAMENTO, CALIFORNIA

TUESDAY, JULY 25, 2000, 9:00 A.M.

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H.O. BROWN: Come to order.

Good morning, ladies and gentlemen.

Mr. O'Brien, you are up and you are doing cross-examination. You had a concern last evening about you wanted to strike some testimony.

MR. O'BRIEN: Yes, Mr. Brown. The only thing I was concerned about is I thought Mr. Pyle's answer wandered into a discussion or an opinion about riparian rights. And I simply don't think this witness is qualified to render opinion on that issue, and, secondly, it is not an issue in this hearing, and I would move to strike at least the portion of his answer that dealt with riparian rights.

H.O. BROWN: I have asked our Court Reporter to type up the question and the answer, and if you would like, parties, I can read the question and the answer. That may help you.

MR. O'BRIEN: Please.

H.O. BROWN: In reference to the 110,000 increment acres, Mr. O'Brien --

Can you hear me in the back of the room this morning?

In reference to 110,000 acres, Mr. O'Brien's question:

"You didn't attempt to verify the accuracy of his numbers?"

1 Mr. Pyle, "No."

2 Mr. O'Brien, "The lands you identified within Mr.
3 Maloney's client group that are suitable for vineyard
4 cultivation, did you attempt to determine whether any of
5 those lands have an adequate water supply within the
6 aquifers that underlies those lands?"

7 Mr. Pyle, "No. We did in some of the lands determine
8 that the extent of the water-bearing material up through the
9 Paso Robles formation."

10 And there was a slight break.

11 Mr. Pyle, "Actually, don't really see distinction in
12 water rights myself. Because these lands have not yet been
13 developed but they are within an area contiguous to the
14 river, then they are riparian supply, and they would have
15 water supply even if not necessarily overlying a favorable
16 area for production of wells."

17 Is that the issue?

18 MR. O'BRIEN: Yes, Mr. Brown. I think maybe the way to
19 handle this is to simply strike after that break that you
20 mentioned, because I think up to that point he was
21 responsive to my question. From that point on he moved into
22 a discussion of what I would consider more water rights
23 issue.

24 H.O. BROWN: So you're proposing the last paragraph,
25 the last question, "Actually don't really see distinction in

1 water rights myself"?

2 MR. O'BRIEN: Correct.

3 H.O. BROWN: Are there any objections to that, Mr.
4 Maloney?

5 MR. MALONEY: Yes, your Honor.

6 All he is talking about, the way I understand it, I may
7 have missed the reading. I don't do very well in audio or
8 oral stuff.

9 It seemed to me all he was talking about was the fact
10 that the land was physically riparian to the river in his
11 opinion. He admitted he knew nothing about the water
12 rights. This goes to the area that we call the potential
13 water users area.

14 As you note, the potential water users are --

15 THE COURT REPORTER: I can't hear when you are moving
16 the papers.

17 MR. MALONEY: -- speaks in terms of land that is
18 riparian to the river. It doesn't talk about rights. We
19 are not here to talk about the rights, in connection with
20 this particular argument.

21 H.O. BROWN: I think we can move off of this rather
22 quickly. I am ready to rule on this.

23 Mr. Pyle is a geologist; is that correct?

24 MR. PYLE: Hydrogeologist.

25 H.O. BROWN: Obviously you do not have a legal

1 background or qualified to give a legal opinion on this
2 issue. So I am not going to strike the paragraph, but we
3 will qualify it with my statement here that you are not
4 qualified to give legal opinion. I'll leave it in and give
5 it the weight of the evidence with the emphasis that I just
6 stated.

7 MS. KATZ: Could I interrupt just a minute?

8 H.O. BROWN: You're not changing my ruling, are you?

9 MS. KATZ: No. Clarifying something.

10 H.O. BROWN: Fine.

11 MS. KATZ: Based on what Mr. Maloney just said, perhaps
12 if Mr. Pyle substituted the word "contiguous" to the stream
13 as opposed to riparian maybe that would help matters. It
14 still gets to the question of whether there is a riparian
15 right, but that may help.

16 MR. MALONEY: I have no problem with that substitution.

17 H.O. BROWN: Thank you, Ms. Katz. I am satisfied with
18 the way it is if both the attorneys are.

19 Thank you.

20 MR. O'BRIEN: Thank you, Mr. Brown.

21 H.O. BROWN: Proceed.

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1 CONTINUED CROSS-EXAMINATION OF SALINAS VALLEY PROTESTANTS

2 BY MONTEREY COUNTY WATER RESOURCES AGENCY

3 BY MR. O'BRIEN

4 MR. O'BRIEN: Mr. Pyle, I want to just make sure I
5 understand what you did or didn't do with respect to the
6 question of analysis of the water supply from aquifers
7 directly underlying these lands that you have stated may be
8 subject to future development.

9 MR. MALONEY: Your Honor, I object to this whole line
10 of questioning because he is bringing up this issue about
11 aquifers underlying land. I have no idea what he means by
12 that. And it seems to me it sort of smells about a
13 discussion about water rights. I thought that we are trying
14 to keep all this water rights discussion out.

15 H.O. BROWN: Let's see if you can ask that a little
16 different, Mr. O'Brien, so we can circumvent that concern.

17 MR. O'BRIEN: Mr. Pyle, as I understand your testimony
18 and the testimony of Mr. Merrill, one of the points you are
19 making is that the Agency in all its hydrologic analysis
20 should take into account the fact that there is going to be
21 all this new vineyard production in the Salinas Valley.

22 Is that a fair summary?

23 MR. PYLE: That is how I understand it, yeah.

24 MR. O'BRIEN: Seems to me that in assessing the
25 validity of those assertions as to new vineyard production

1 one reasonable question to ask is whether there is a new
2 water supply for these new vineyard acreages that you and
3 Mr. Merrill say are going to be out there in the Salinas
4 Valley.

5 Would you agree that water supply is a relevant issue?

6 MR. MALONEY: Objection. I am not sure that Mr. Pyle
7 is competent to testify about new vineyard development. He
8 is competent to testify about new development, but not
9 necessarily new vineyard development.

10 Mr. Merrill is competent to testify about new vineyard
11 development. I don't think Mr. Pyle knows anything about
12 grapes.

13 MR. O'BRIEN: Is that an objection, sir?

14 MR. MALONEY: Yes.

15 H.O. BROWN: Do you have a response?

16 MR. O'BRIEN: I am simply asking him about the water
17 supply aspects of this. I understand Mr. Merrill was the
18 principal witness on new vineyard development. I am trying
19 to get at the question if anyone on that side of the table
20 has looked at the question of whether there is adequate
21 water supply for these new vineyard acres. That is the gist
22 of my question.

23 H.O. BROWN: I will permit that. I think you can
24 answer that without going into water rights. If you've done
25 an analysis of what the demand of 110,000 acres might be and

1 an idea of where that water may come from.

2 MR. PYLE: We haven't done any detailed analysis of
3 that.

4 MR. O'BRIEN: Have you done some undetailed analysis?

5 Let me withdraw that question and ask it this way:

6 Have you done any quantitative analysis of that issue?

7 MR. PYLE: What part of it in particular? What part of
8 the issue?

9 MR. O'BRIEN: The issue is whether you have analyzed
10 the question of whether there is an adequate water supply
11 for all of these 110,000 acres of land which Mr. Merrill
12 says are going to come into vineyard production, whether you
13 determined where the water is going to come from to service
14 those acres.

15 MR. MALONEY: Objection. My objection is based on the
16 following facts: There has been a small analysis done or an
17 analysis done of that very issue. But that analysis was
18 based on the careful analysis of the water rights. Now if
19 Mr. O'Brien wants to get into this discussion about the
20 water rights in the whole valley, we are more than willing
21 to do that at this stage. What he is doing he is opening up
22 the whole water rights discussion by asking the question.
23 We've done that analysis, analyzing the water rights in the
24 valley.

25 H.O. BROWN: Mr. Maloney has a point here, Mr.

1 O'Brien. If the question was asked, "Have you done an
2 analysis on the demand of those vineyards," then an idea
3 where the sources might come from, I would permit that.

4 MR. O'BRIEN: I will ask you that question. Would you
5 please answer Mr. Brown's question?

6 MR. PYLE: Yeah. We have done a rough analysis of the
7 demand that is based on irrigation requirement of about 1.5
8 feet per acre per year. And --

9 H.O. BROWN: Excuse me.

10 Is that consumptive use or applied water?

11 MR. PYLE: That is irrigation requirements. That is
12 just applied.

13 And we have looked at it with respect to various water
14 resources. That does get into a water rights issue. We
15 have looked at the central part of the valley as far as a
16 source and also outside of the valley floor.

17 MR. MALONEY: At this point, your Honor, we are -- I
18 object to any further questions along this line unless Mr.
19 O'Brien wants to get into the whole water rights thing.
20 Because our evidence will show exactly where the water
21 rights are and part of this analysis is based on the water
22 rights.

23 MR. O'BRIEN: I am not interested in water rights,
24 Mr. Brown. I am interested in where the water is going to
25 come from physically. That is all I am interested in here.

1 I believe I am entitled to ask that because I believe I am
2 entitled to challenge the validity of this assertion that
3 Mr. Maloney has made throughout this hearing that there is
4 going to be 110,000 new acreage of new vineyard in the
5 valley.

6 I believe in order for this Board to assess the
7 validity of this assertion it's a reasonable and logical
8 question to ask, "Where is the water going to come from?"

9 MR. MALONEY: We know exactly where --

10 H.O. BROWN: I would question it. It could come from
11 imported water. It could come from surface water or
12 groundwater. I think you can answer that without getting
13 into a water rights issue itself, if you've made those
14 analyses. If you haven't, that is fine.

15 MR. PYLE: I think I can only repeat what I said which
16 is it could come -- we have looked at various sources, from
17 the valley floor as well as outside the valley floor,
18 surface and groundwater.

19 MR. O'BRIEN: Have you also looked at sources from
20 outside the Salinas Valley?

21 MR. PYLE: No.

22 MR. O'BRIEN: Has this analysis been reduced to
23 writing?

24 MR. MALONEY: Objection. I have to withdraw the
25 objection.

1 H.O. BROWN: You're withdrawing it?

2 MR. MALONEY: I'm withdrawing it.

3 MR. PYLE: No, I don't believe it has. I mean I may
4 have sketched out some rough numbers. But the source is
5 really the key and that gets to the water rights issue. So,
6 that is as far as I can go, I guess.

7 MR. O'BRIEN: Can you tell me, based on the sketching
8 out that you have done, approximately what proportion of
9 the water to serve these 110,000 acres would come from the
10 valley floor versus some other source?

11 MR. PYLE: We haven't gone into any kind of detail like
12 that.

13 MR. O'BRIEN: You said you used an irrigation number in
14 your calculations of 1.5 acre-feet per acre of applied
15 water; is that correct?

16 MR. PYLE: Yes.

17 MR. O'BRIEN: Have you also included a component for
18 frost protection water?

19 MR. PYLE: That is a very general number that would
20 include some vineyards using frost protection and some that
21 may not.

22 MR. O'BRIEN: So I understand your answer, are you
23 saying that the 1.5 acre-feet per acre includes frost
24 protection water?

25 MR. MALONEY: Objection. I think the question has

1 already been answered, your Honor.

2 H.O. BROWN: I don't think so. I'm interested in the
3 answer myself.

4 MR. PYLE: There's a mixture of the need for frost
5 protection under that assumption and not. We really didn't
6 get to breakdown frost protection or not. It is a very
7 gross number for water requirement for vineyards in the
8 valley.

9 MR. O'BRIEN: I'm still not sure I understand your
10 question, and forgive me if I am slow here this morning.
11 The 1.5 acre-foot per acre number, in your mind, does
12 include a component for frost protection?

13 MR. PYLE: Yes. Perhaps not for all vineyards.

14 MR. O'BRIEN: Mr. Pyle, have you reviewed the Notice of
15 Hearing that was issued by the Board in this proceeding?

16 MR. PYLE: I have briefly.

17 MR. O'BRIEN: You're aware then, sir, one of the issues
18 identified by the Board is whether diversions by my client
19 of the water that would be appropriated under application
20 30532 have caused any injury to senior water rights
21 downstream? Were you aware that was one of the issues?

22 MR. PYLE: Yes, I believe so.

23 MR. O'BRIEN: And you're aware that that was one of the
24 issues in this proceeding at the time you prepared your
25 written testimony; is that correct?

1 MR. PYLE: Yes.

2 MR. O'BRIEN: I would like you to refer to your
3 written testimony which is Salinas Valley Protestants'
4 Exhibit 20. I would like you to show me where in that
5 document you address the issue of injury to senior
6 downstream water rights.

7 MR. MALONEY: Objection. The document speaks for
8 itself.

9 MR. O'BRIEN: I just want to make sure that I am not
10 missing anything.

11 H.O. BROWN: Overruled.

12 MR. PYLE: On Page 2, second paragraph from the bottom,
13 discusses the water availability analysis.

14 MR. O'BRIEN: That is the paragraph that reads:

15 After I have had the opportunity to review
16 the Agency water availability analysis as
17 required by the SWRCB in its letter dated
18 March 26, 1999, Stetson Engineers may prepare
19 a surplus flow calculation as rebuttal.

20 (Reading.)

21 Is that the statement you are referring to?

22 MR. PYLE: Yes.

23 MR. O'BRIEN: That is the sum and substance of your
24 testimony with respect to the issue of to senior water
25 rights?

1 MR. PYLE: Yes.

2 H.O. BROWN: You said on Page 2.

3 MR. O'BRIEN: Page 2 of Exhibit SVP 20, second
4 paragraph up from the bottom.

5 H.O. BROWN: Okay.

6 MR. O'BRIEN: Now you stated in that paragraph that
7 Stetson Engineers may prepare a surplus flow calculation as
8 rebuttal. I take it from the various statements of Mr.
9 Maloney that that, in fact, has occurred?

10 MR. PYLE: Right.

11 MR. O'BRIEN: I don't want to get into that at this
12 point. We will wait for rebuttal to get into the substance
13 of that.

14 I assume that the surplus flow calculation relies on
15 the SVIGSM model?

16 MR. PYLE: To a very limited degree, yes.

17 MR. O'BRIEN: You have had the SVIGSM model in your
18 possession for some time now; is that correct?

19 MR. PYLE: I have had various versions of it. Most
20 recently just for a couple of weeks, I guess is the most
21 recent version.

22 MR. O'BRIEN: Those versions were provided to you from
23 the Agency, correct?

24 MR. PYLE: Believe we got one from the Agency and one
25 from Mr. Scalmanini's office.

1 MR. MALONEY: The record should show, your Honor, that
2 the last version of the model was received after the date
3 for the testimony, I believe, date required for testimony
4 disclosures.

5 H.O. BROWN: Thank you.

6 MR. O'BRIEN: I believe in your direct testimony
7 yesterday you stated that in your analysis you relied on
8 certain current land use data that was provided by Mr.
9 Maloney; is that correct?

10 MR. PYLE: Correct.

11 MR. O'BRIEN: Do you know what the source of that data
12 was?

13 MR. PYLE: Mr. Maloney and his clients.

14 MR. O'BRIEN: Did you ever attempt to -- Strike that.
15 Let me ask this question first:

16 Did that data only relate to the lands owned by Mr.
17 Maloney's clients?

18 MR. PYLE: I believe so.

19 MR. O'BRIEN: Did you look at land use data or land use
20 in the Salinas Valley other than the lands owned by Mr.
21 Maloney's clients?

22 MR. PYLE: Not at that time, not recently, no.

23 MR. O'BRIEN: Did you ever attempt to verify the
24 accuracy of the land use data that Mr. Maloney provided to
25 you?

1 MR. PYLE: No, we didn't have the time or means to do
2 that.

3 MR. O'BRIEN: That is all I have for these witnesses,
4 Mr. Brown.

5 Mr. Petrovic is here, and I proposed to Mr. Virsik this
6 morning, I know he has a tight schedule, I would be happy in
7 order to expedite getting him out of here to ask my
8 questions of him now, and I don't have more than probably a
9 dozen questions for him now. We could get him out of here
10 fairly quick. If Mr. Maloney prefers, we can wait until our
11 rebuttal case.

12 MR. MALONEY: We will do redirect now and --

13 MR. VIRSIK: Then we can have Petrovic so we don't
14 break the flow of the panel.

15 MR. DONLAN: Mr. Brown, Tanimura & Antle would like to
16 cross-examine the witnesses as well.

17 H.O. BROWN: Thank you, Mr. O'Brien.

18 Mr. Donlan, you are next.

19 ----oOo---

20 CROSS-EXAMINATION OF SALINAS VALLEY PROTESTANTS

21 BY TANIMURA & ANTLE

22 BY MR. DONLAN

23 MR. DONLAN: Mr. Merrill, I just have a few questions
24 for you. I don't think I have any more of Mr. Pyle. I am
25 just trying to clarify some of the answers you gave

1 yesterday.

2 MR. MERRILL: Okay.

3 MR. DONLAN: Is the Mondavi acreage, I believe you said
4 2,000 acres yesterday that is being planned that you are
5 working on, in the San Ardo area.

6 Do you recall that?

7 MR. MALONEY: Objection. He is misstating his
8 testimony. I think he said it's actually been replanted, I
9 believe.

10 H.O. BROWN: Can you restate the question, Mr. Donlan.

11 MR. DONLAN: Have those 2,000 acres been planted in the
12 San Ardo area?

13 MR. MERRILL: The Mondavi portion is about -- it's just
14 under 600 acres planted. There is plans -- to complete the
15 planting will be about another 500. The balance of the
16 2,000 would be various other properties.

17 MR. DONLAN: Are they contiguous properties?

18 MR. MERRILL: In some cases they are.

19 MR. DONLAN: Comprising in total 2,000 acres?

20 MR. MERRILL: Yeah.

21 MR. DONLAN: Is that property in total one of the
22 Salinas Valley Protestants as they are referred to in this
23 proceeding? Are you aware of that?

24 MR. MERRILL: Some of it is and some of it isn't.

25 MR. DONLAN: Aside from that property and the San

1 Bernabe property, does your company, Coastal Management,
2 manage any other vineyards or irrigation land in the Salinas
3 Valley?

4 MR. MERRILL: I do under another company called Mesa
5 Vineyard Management.

6 MR. DONLAN: Is that vineyard property?

7 MR. MERRILL: Yes.

8 MR. DONLAN: Is that located in the Upper Valley or
9 Forebay area?

10 MR. MERRILL: Upper Valley.

11 MR. DONLAN: How many acres is that?

12 MR. MERRILL: Planted at the moment is about 330.

13 MR. DONLAN: Are those Protestants in this proceeding?

14 MR. MERRILL: No.

15 MR. DONLAN: Are you authorized to speak on behalf of
16 the Protestants, all the Protestants, in this proceeding?

17 MR. MERRILL: I don't know whether I am or not.

18 MR. DONLAN: Let me clarify that question.

19 MR. MERRILL: I doubt it.

20 MR. DONLAN: Is your testimony submitted on behalf of
21 San Bernabe exclusively?

22 MR. MERRILL: My understanding that is the case.

23 MR. MALONEY: Why don't you ask your questions, and I
24 will object if there is any problems with the question.

25 MR. DONLAN: I have asked my question.

1 Is your testimony submitted on behalf of San Bernabe
2 exclusively?

3 MR. MERRILL: Yes.

4 MR. DONLAN: Thank you.

5 MR. MALONEY: There may -- your Honor, he is submitting
6 generalized testimony which would be on behalf of all the
7 Protestants. All we would do is cumulatively if we asked
8 other people to come back and speak to this, on the subject
9 matter. He actually is the manager of the development on
10 one of the other named Protestants.

11 H.O. BROWN: Mr. Merrill, you wish to change your
12 answer, then?

13 MR. MERRILL: Yeah, I probably should. Because there
14 is also general -- there is general information in my
15 testimony that clearly is outside this, not restricted to
16 San Bernabe.

17 MR. DONLAN: Your answers are responsive and on behalf
18 of all the Salinas Valley Protestants?

19 MR. MERRILL: If I have to choose one or the other, I
20 guess I'll choose the latter, yes.

21 MR. MALONEY: On matters of general nature.

22 MR. DONLAN: To your knowledge, do any of the Salinas
23 Valley Protestants operate surface diversion facilities?

24 MR. MERRILL: I don't know.

25 MR. MALONEY: Objection. That sort of gets into water

1 rights, but we'll let it go. We don't think we should spend
2 a lot of time on that issue.

3 H.O. BROWN: He already answered the question.

4 MR. DONLAN: Are you aware of any plans to construct
5 surface diversions facilities?

6 MR. MERRILL: I am not qualified to really comment on
7 what specifically is a surface diversion facility. You
8 should talk to an engineer or somebody or attorney. Perhaps
9 you could be more specific.

10 MR. DONLAN: I will be more specific.

11 How does San Bernabe take water for irrigation on its
12 lands?

13 MR. MERRILL: From wells.

14 MR. DONLAN: What is the general depth of those wells?

15 MR. MERRILL: Part of the well field is in the --
16 probably to a maximum depth of 130 feet, and then we have
17 additional wells that are up on the bench a little farther
18 from the river that go down about 300 feet.

19 MR. DONLAN: At any time of the year does San Bernabe
20 take water off the surface of the river?

21 MR. MERRILL: No.

22 MR. DONLAN: When was the vineyard land planted on the
23 San Bernabe property?

24 MR. MERRILL: Planting commenced, as I understand it,
25 in late 1971 or into '72, was about the beginning of the

1 planting in San Bernabe.

2 MR. DONLAN: What was the land used for prior to the
3 planting of a vineyard?

4 MR. MERRILL: Varied. Just from grazing, row crops,
5 beans, field crops. Some irrigated, some not irrigated,
6 some grazing.

7 MR. DONLAN: When were those reservoirs that you spoke
8 of yesterday constructed?

9 MR. MERRILL: They were built as part of -- the vast
10 majority of them were built as part of the vineyard
11 development. They are -- I believe there were a few
12 existing ones that maybe dated back to the original what
13 irrigating farm there was, and there was also some wells on
14 the property, based on what I have seen in records that
15 predate the vineyard development because there was irrigated
16 farming going on there.

17 MR. DONLAN: The reservoirs that are constructed for
18 vineyard purposes, when were those constructed?

19 MR. MERRILL: From 1970 to -- nominally late '76.

20 MR. DONLAN: Are you aware of any other similar type of
21 reservoir systems in the vineyard industry in the Upper
22 Valley or Forebay area?

23 MR. MERRILL: Most vineyard operations that have frost
24 control, sprinkler-driven frost control, typically use
25 reservoirs for short-term storage.

1 MR. DONLAN: Do you know where those reservoirs might
2 be located?

3 MR. MERRILL: Throughout the valley. They are used in
4 vineyards, row crops, quite typically irrigated agriculture
5 along the Central Coast. Not unique to the vineyard
6 business.

7 MR. DONLAN: Do those -- are those filled with water
8 from the Salinas basin, the valley floor?

9 MR. MERRILL: Yes.

10 MR. DONLAN: Do you recall how many frost days there
11 were in 1990?

12 MR. MERRILL: I don't specifically recall how many in
13 1990. I believe 1990 was a relatively light frost year,
14 which was fortunate since we were short of water. My guess
15 would be ten days or less.

16 MR. DONLAN: What is the average number of frost days?

17 MR. MERRILL: Average number of frost days, and Mr.
18 Petrovic can comment more specifically on this since he is
19 operations manager, but it would be my guess 10 to 20 days
20 would probably be average.

21 MR. DONLAN: Those are all the questions I have,
22 Mr. Brown.

23 H.O. BROWN: Thank you, Mr. Donlan.

24 Mr. Bezerra.

25 MR. BEZERRA: Thank you, Mr. Brown. I have very

1 limited number of questions for Mr. Pyle.

2 ---oOo---

3 CROSS-EXAMINATION OF SALINAS VALLEY PROTESTANTS

4 BY CLARK COLONY WATER COMPANY &

5 ROSENBERG FAMILY RANCH

6 BY MR. BEZERRA

7 MR. BEZERRA: First of all, good morning.

8 MR. PYLE: Good morning.

9 MR. BEZERRA: As you may or may not know, I am Ryan
10 Bezerra. I am the attorney for Rosenberg Family Ranch and
11 Clark Colony Water Company.

12 Mr. Pyle, could I get you to take a look at Exhibit
13 SVP, which is acreage calculations for various slopes and
14 soil qualities.

15 Do you have that?

16 MR. PYLE: Yes.

17 MR. BEZERRA: Could I ask you to look at Subsection
18 2(b), which is entitled Area of SCS Soils Digitized in the
19 Upper Valley within Protestants' Lands (by soil class).

20 Do you see that?

21 MR. PYLE: Yes, I do.

22 MR. BEZERRA: Do Protestants' lands in a subsection of
23 your land include any lands owned by the Rosenberg Family
24 Ranch?

25 MR. PYLE: I believe they do.

1 MR. MALONEY: Where does Rosenberg Family Ranch own
2 land?

3 MR. BEZERRA: My question is what Protestants' land are
4 reflected in SVP-5. It is not on a map.

5 MR. PYLE: On the other; it is that map that you have
6 there. It is the soils map.

7 MR. BEZERRA: Can you refer for the record to what map
8 you are directing us to?

9 MR. MALONEY: SVP-2 as modified. The map shows some
10 hatch marks over what is perceived to be the Rosenberg
11 property.

12 MR. BEZERRA: My question goes to Exhibit SVP-5.

13 It is not my understanding that the Rosenbergs have
14 been removed from SVP-5.

15 MR. PYLE: It looks to me as though the cross-hatched
16 area, which is new to me as of yesterday, includes a very
17 small fragment of the colored area. That is only --

18 MR. BEZERRA: I am not exactly clear what color areas
19 are on that map.

20 MR. PYLE: The colored areas are the soil types. The
21 green is Class 1 through 4. The brown is classes greater
22 than four. So, looking at it from here, there is a small
23 portion in one corner that appears to be digitized soils
24 within the Rosenberg property.

25 MR. MALONEY: Can we identify that portion for the

1 record?

2 MR. BEZERRA: I prefer to ask my questions and then
3 when you move those exhibits into the record we can deal
4 with what they reflect.

5 Is that acceptable, Mr. Brown?

6 H.O. BROWN: Sure. Go ahead. It's your turn.

7 MR. BEZERRA: Thank you.

8 So in the Subsection 2(b) when you have the various
9 acreage calculations for SCS classes 1 through 8, some of
10 those acreage calculations include the Rosenberg Family
11 Ranch, correct?

12 MR. PYLE: It looks from the map there would be a very
13 tiny fraction. But the answer is yes.

14 MR. BEZERRA: These acreage calculations are not
15 entirely accurate; is that correct?

16 MR. PYLE: They are close to being accurate within
17 the accuracy with which they were digitized. Even if we
18 exclude your parcel, I don't think it would affect the
19 result very much.

20 MR. BEZERRA: They would include the parcels of
21 Rosenberg Family Ranch?

22 MR. MALONEY: Objection. What we have is -- the only
23 evidence we have is a small portion of one parcel may have
24 been included. Not parcels.

25 H.O. BROWN: I think we're pretty clear on that issue.

1 MR. BEZERRA: Let me move to Subsection 2(c) of Exhibit
2 SVP-5, which is entitled Area of SCS Soils Digitized in the
3 Upper Valley within Protestants' Lands (by soil class).

4 Did the Protestants' lands in Subsection 2(c) include
5 any lands of the Rosenberg Family Ranch?

6 MR. PYLE: They may not. This subset, and I apologize
7 for not having that Subsection (c) titled very clearly. But
8 I believe that is referenced above the valley floor. Those
9 are acreages above the valley floor. It looks to me from
10 the map we just looked at that -- those lands that were in
11 question were on the valley floor, not above the valley
12 floor. So I don't believe that calculation would be
13 affected.

14 MR. BEZERRA: Are you representing for the record
15 Subsection 2(c) of Exhibit SVP-5 does not include any lands
16 of the Rosenberg Family Ranch?

17 MR. PYLE: I believe so based on what I've learned
18 yesterday and today. I could confirm that more properly by
19 recalculating.

20 MR. BEZERRA: Let me move on to Subsection 3 of SVP-5,
21 which is entitled Slope of Protestants' Lands Within Vested
22 Rights Lands Above Valley Floor with SCW Soil
23 Classifications of 1 through 4.

24 Did the Protestants' lands in Subsection 3 include any
25 properties of the Rosenberg Family Ranch?

1 MR. PYLE: The same response as before. If they are
2 above the valley floor -- if they are on the valley floor,
3 it does not.

4 MR. BEZERRA: Once again you are representing for the
5 record that Subsection 3 of this exhibit does not include
6 any land of the Rosenberg Family Ranch?

7 MR. PYLE: That is what I believe, although I would be
8 happy to check my calculations.

9 MR. BEZERRA: Let me go back to Subsection 2(b). Now I
10 am looking at an exhibit we received pursuant to the notice
11 of public hearing back in June, which did not reflect any
12 exclusions of the Rosenberg Family Ranch.

13 Can you tell me on what legal basis you relied for
14 including the Rosenberg Family Ranch within Protestants'
15 lands?

16 MR. PYLE: Didn't really use a legal basis. I was
17 provided some information by Mr. Maloney.

18 MR. BEZERRA: It was provided to you by Mr. Maloney as
19 to what lands would go to the Protestants' lands; is that
20 correct?

21 MR. PYLE: Yes.

22 MR. BEZERRA: Let me make the record very clear.

23 Mr. Maloney instructed you to include the Rosenberg
24 Family Ranch properties within Protestants' lands in
25 Subsection 2(b) of this exhibit?

1 MR. PYLE: If the Rosenberg Family Ranch lands were
2 included in the Protestants', yes. As all the Protestants,
3 yes. I lumped those all together.

4 MR. BEZERRA: Thank you very much, Mr. Pyle, I
5 appreciate it.

6 H.O. BROWN: Ms. Lennihan.

7 MS. LENNIHAN: No questions.

8 Thank you, Mr. Brown.

9 H.O. BROWN: Redirect, Mr. Maloney.

10 MR. MALONEY: Can I ask my client a question before I
11 start redirect?

12 H.O. BROWN: Sure.

13 (Discussion held off the record.)

14 ---oOo---

15 REDIRECT EXAMINATION OF SALINAS VALLEY PROTESTANTS

16 BY MR. MALONEY

17 MR. MALONEY: I wanted to ask you a couple questions
18 about these maps to clarify things, Mr. Pyle. I'm looking
19 at SVP-1. This map has not been admitted into evidence. I
20 am supposed to prepare a new map taking off the water
21 claims, and I think that is the only thing that I am
22 supposed to prepare, take off the map. I think the red line
23 is all right. We have had no discussion about what the
24 dotted line was.

25 Can you tell me what the area within the dotted line is?

1 MR. PYLE: The dotted line represents the boundary of
2 the water-bearing materials as defined by the USGS in a
3 couple of different publications, one in particular
4 groundwater model by Tim Durbin of the Salinas Valley.

5 MR. MALONEY: Could you tell me what water-bearing
6 materials are?

7 MR. PYLE: Generally regarded as materials that contain
8 and yield readily groundwater to wells.

9 MR. MALONEY: Let me show you exhibit for
10 identification, Protestants' Exhibit 22. This is a letter
11 from Mr. Sabiston to Mr. Tucker of the City of Paso Robles.

12 Could you take a quick look at this letter. This is
13 not in our submitted exhibits. It was brought in on
14 cross-examination last week.

15 H.O. BROWN: The parties have copy of it?

16 MR. MALONEY: I gave out a whole bunch last week. I
17 don't know if they have a copy. Ms. Lennihan's shaking her
18 head. I assume Ms. Goldsmith probably stole them all.

19 A copy of this letter was sent to everybody on July
20 19th, 2,000.

21 H.O. BROWN: Just a minute, Mr. Maloney, while we are
22 digging for ours.

23 MS. KATZ: We have Exhibit 22, Mr. Maloney, as the
24 minutes of the Monterey County Recycling Project.

25 MR. VIRSIK: Is our mismark. If it is not 22, it is

1 23.

2 MR. MALONEY: It is not on the list.

3 MR. VIRSIK: If it is not 22, it is 23.

4 MS. KATZ: Just so we get it straightened out.

5 MR. MALONEY: I apologize.

6 MS. KATZ: That is 23.

7 MR. MALONEY: I apologize. It has been mismarked by
8 us. Can I ask you questions?

9 Have you read it? Has everybody seen it? Can I go
10 ahead? Has everybody seen it?

11 Can I go forward, your Honor?

12 H.O. BROWN: Proceed.

13 MR. MALONEY: Does that water-bearing material
14 reflected in SVP-1 reflect the Paso Robles formation in the
15 Upper Valley that we discussed in that Sabiston letter,
16 Exhibit 23?

17 MR. PYLE: Yes, same formation.

18 MR. MALONEY: Thank you.

19 Now, how many times have you physically been in the
20 Upper Valley and examined the physical conditions in the
21 Upper Valley?

22 MR. PYLE: Two or three times.

23 MR. MALONEY: When you prepared the new land coverages
24 of the Protestants, did you examine any photographs, aerial
25 photographs of the Upper Valley?

1 MR. PYLE: No.

2 MR. MALONEY: Have you ever examined any photographs of
3 the Upper Valley?

4 MR. PYLE: Yes.

5 MR. MALONEY: Have you looked at land coverages based
6 on these photographs?

7 MR. PYLE: I can't recall actually. We certainly were
8 looking at land use with the photographs. Whether we
9 classified them based on the photographs, I can't recall.
10 It's been a couple years.

11 MR. MALONEY: Did you ever look at any assessor parcel
12 maps prepared by any of the Protestants to determine land
13 coverages?

14 MR. O'BRIEN: Excuse me, Mr. Brown. I am not sure what
15 Mr. Maloney means by land coverages. Can we have some
16 clarification?

17 H.O. BROWN: Thank you. You beat me to it.

18 MR. MALONEY: The questions were asked about this
19 particular map right here, Exhibit 3. And what I am doing
20 is going into how this was prepared. Just so we clarify
21 this it is not coming exclusively from my office, but
22 delivered in form of coverages on assessor parcel maps which
23 we, the Protestants, in turn gave to Mr. Pyle's office which
24 is all I am trying to clarify.

25 H.O. BROWN: I am not sure I understand what you mean

1 by "coverages."

2 MR. MALONEY: Whether vineyards or not vineyards on
3 that map. That is the only question.

4 H.O. BROWN: I understand. Do you understand that?

5 MR. O'BRIEN: Yes.

6 MR. MALONEY: I just want to clarify where the data
7 came from.

8 Mr. Pyle, did you ever look at any assessor parcel maps
9 showing development, et cetera, on these lands?

10 MR. PYLE: Yes, we did.

11 MR. MALONEY: To the best of your knowledge, these were
12 prepared by representatives or the clients themselves -- or
13 were prepared by Protestants or representatives of
14 Protestants; is that correct?

15 MR. PYLE: Yes.

16 MR. MALONEY: That is all for Mr. Pyle at this time.

17 Now Mr. Merrill.

18 Mr. Merrill, this was your first time testifying before
19 the State Water Resources Control Board; is that correct?

20 MR. MERRILL: Yes.

21 MR. MALONEY: You did not do too well. I am going to
22 try to rehabilitate you now.

23 At my request you read the Internet last night; is that
24 correct?

25 MR. MERRILL: That's correct.

1 MR. MALONEY: When you were reading the Internet did
2 you find anything about the grape development in the
3 southern part of Monterey County?

4 MR. MERRILL: Yes. It's actually been on the Internet,
5 been on the news, Calloway, a major --

6 MR. MALONEY: Wait a second. I want to show you
7 something. I don't have a copy hot off the Internet. We
8 can get copies during the break. We can probably -- came
9 from the pressdemocrat.com. I am going to give a copy next
10 in order for identification. I believe this is --

11 MR. VIRSIK: To maintain our pretab system, it would be
12 48. That would not be duplicating numbers.

13 MR. MALONEY: Exhibit 48. We will get copies of this
14 during the break.

15 H.O. BROWN: All right.

16 MR. MALONEY: I should show it to you first.

17 H.O. BROWN: Okay.

18 MR. MALONEY: Sorry to be taking up so much time on
19 this.

20 It's probably best that he explain it than read the
21 whole thing. Let him describe it. We can do it a lot
22 quicker. Want to make sure you guys have it.

23 MR. O'BRIEN: Mr. Brown, I recognize that the rules of
24 hearsay in these proceedings are relaxed, but I think it is
25 fairly unusual to present a newspaper article and then have

1 a witness testify from that article not based on his own
2 personal knowledge or personal analysis, but based on the
3 contents of an article.

4 We have no idea whether this is an accurate article or
5 not. We don't have the ability to cross-examine the people
6 quoted in the article and the person who wrote the article.
7 And I think just from a basic fundamental fairness
8 standpoint it is a very unusual procedure, and I would
9 object.

10 H.O. BROWN: Mr. Maloney, where are you leading with
11 this?

12 MR. MALONEY: Basically, we are just going to
13 rehabilitate Mr. Merrill and demonstrate -- he knows most of
14 the people in the article, of course, in the position of
15 president of CAWG. We are going to get to his knowledge of
16 the wine industry and why it is occurring, is being
17 confirmed across the world, in the Internet and all the
18 newspapers. Everything he testified to yesterday as a wine
19 spectator is common knowledge. He's going to explain why so
20 much growth is occurring and the significance of that to the
21 overall wine industry. It is going to be real quick. The
22 reason it is taking so long is because everyone wants to
23 read the article.

24 H.O. BROWN: I will permit it.

25 MR. PYLE: The point, and it relates yesterday to the

1 questions asked about on what do I base the prediction that
2 there are going to be significant new acreage planted in
3 grapes. And I spent quite a bit of time talking about the
4 land availability. And the fact of the matter is that that
5 is a key component.

6 Basically, the drive behind this additional grape
7 planting is demand driven. It's the phenomenon of coastal
8 wine. Coastal is a term that is big in the wine industry
9 right now. And basically what is happening is that there is
10 a significant demand for the type of wine grapes that can be
11 grown on these lands. Typically, the price range we are
12 talking about is an 8 to \$12 bottle of wine for the majority
13 of this. What that means there is a formula that an \$8.00
14 bottle of wine means you have a grape cost of \$800 a ton. A
15 \$12.00 bottle of wine is \$1,200 a ton. That is a
16 generality. That is a formula to keep in mind.

17 What that means is you need an area to produce
18 significant quantities of grapes to serve this growing
19 market segment, and that when wineries move to fill the
20 demand for that product it means you move out of the warmer
21 traditional areas of growing grapes, such as the San Joaquin
22 Valley, and they are moving to coastal regions. And coastal
23 regions can be anywhere from Napa, Sonoma, Mendocino down
24 through Monterey, San Luis Obispo, Santa Barbara.

25 Due to the limited land availability in most of those

1 counties, Monterey is the logical choice to plant wine
2 grapes. That is the reason you see articles such as these
3 showing a major producer, Calloway which is owned by
4 Allied Dominic, and this is not the only article. It is a
5 well-known. They just had a press release that they are
6 moving there. They are not the only ones moving there.
7 Kendal Jackson has a big new winery in Soledad, their
8 plans. Mondavi has plans for wineries. It is quite well
9 stated. This is not some far-fetched number I came up
10 with, I've seen a mirage in the distance. It's very
11 realistic.

12 And while it may seem like a great many grapes, to see
13 a hundred thousand new acres, it is a drop in the bucket in
14 terms of how many grapes are raised in California. And you
15 can extend that, quite frankly, to other parts of the world,
16 Languedoc in France produces very important wines and Chili
17 and so on.

18 So the point is that when you look from a layman's
19 perspective at these kinds of numbers that I am putting
20 forth, I can understand a certain amount of skepticism that
21 it seems like a great many acres of grapes have been
22 planted, how in the world could it be that there could be
23 demand for this huge number of grapes in addition. But
24 given the magnitude of the market, there is 3,000,000 tons
25 of wine grapes produced in California. Monterey is

1 producing about 5 percent of the total in the state. Even
2 if you combine San Luis Obispo and Monterey Counties and
3 Santa Barbara you are only talking 300,000 tons of grapes
4 this year. Again, that is not very many tons of grapes
5 compared to the state, 3,000,000 tons in the state.

6 So what I am saying is we are -- am trying to wrap this
7 up -- a good percentage of the growth, may be the majority
8 of growth, in the future is going to come from the coastal
9 segment of the wine business and a large percentage, the
10 majority we'll submit, of the growth of this coastal wine
11 business is logically going to occur in Monterey County.

12 I can further state that based on the superior quality
13 of the wines and the feedback we get from our wineries when
14 we deliver grapes -- we spend a great deal of time in the
15 spring tasting wines, getting feedback how to improve the
16 quality and so -- based on that quality and the fact that
17 the consumers buy it at a reasonable price of -- the
18 consumers are getting a value, that they are coming back to
19 buy more.

20 MR. MALONEY: I think that is fine on this issue. I
21 don't think we have to go any further.

22 H.O. BROWN: May I ask you a question?

23 MR. MERRILL: Certainly.

24 H.O. BROWN: Stay away from the water rights issue.
25 You are aware of the position that the State Water Board is

1 trying to assist in developing a balanced water supply for
2 the Salinas Valley?

3 MR. MERRILL: Yes.

4 H.O. BROWN: We have sent personnel over to try to
5 assist in this endeavor. We sent money over in trying to
6 assist in balance of supply versus demand for the valley.
7 And recognize that there is currently an imbalance of supply
8 versus demand with the 200,000 plus acres that is planted
9 right today.

10 Has your group or others addressed the issue of trying
11 to assist in developing a balance supply versus demand for
12 the valley at the same time that you are contemplating
13 additional plantings within the valley?

14 MR. MERRILL: I think we are. But I think we are
15 mindful of the fact that we believe that these lands on
16 which this grape planting is going to occur have access to
17 water and properly should be able to drill wells and use the
18 water. In many cases they have been paying taxes for many
19 years on it, and there isn't any reason to assume that, you
20 know, whether there may be distribution problems or there
21 may be some need for a rationale use plan so that vineyards
22 have water when they need it and the balance of the basin
23 has water when they need it, which is -- again, we get back
24 to the type of agreements such as used in Napa might be the
25 way to do it.

1 H.O. BROWN: Within your approach is a redistribution
2 of existing supplies as opposed to trying to develop
3 additional supplies to balance the whole basin. Is that the
4 approach?

5 MR. MERRILL: Based on what I have seen, it is not a
6 question of enough water, but rather working out the
7 distribution of the water we have. That is my understanding
8 of the situation.

9 MR. MALONEY: The record should show, and we had it as
10 an exhibit, water supplies were created in the Napa Valley.
11 Basically, what they did is they had a better distribution
12 system. The engineers who were representing the County of
13 Napa in 1970 proposed these new huge water supplies, and the
14 vineyard people working with the County and City of Napa
15 chose not to follow that plan. They developed a
16 redistribution system.

17 H.O. BROWN: I understand the Napa analysis, and the
18 use of the reservoirs were put in for flood control or for
19 frost protection. We understand that.

20 Let's proceed.

21 MR. MALONEY: I asked for a stipulation yesterday, and
22 I wasn't able to get it, and we have a series of comments
23 made about potentially a hundred to 110,000 acres of 15
24 percent land outside of MCWRA's Exhibit 2B. I tried to find
25 out exactly how many was nonirrigated agriculture needing

1 vegetation within -- excuse me, outside of 2A. I tried to
2 find out how much was not --

3 MS. KATZ: Zone 2A?

4 MR. MALONEY: Zone 2A, which essentially is the zone
5 covered in part by this application and the San Antonio
6 application.

7 I tried to find out how much was available for
8 development within the zone. This would be basically the
9 zone that Mr. Scalmanini spoke to, Mr. Taghavi or Dr.
10 Taghavi spoke to. I believe it is shown on Exhibit 2B. I
11 would like to direct your attention, Mr. Merrill, to
12 Tanimura & Antle Exhibit 5.

13 H.O. BROWN: Mr. Donlan, you rise.

14 MR. DONLAN: I would just like to clarify that Mr.
15 Scalmanini did not speak about assessment zones. He spoke
16 about hydrologic base.

17 MR. MALONEY: We will talk -- the assessment zone that
18 he is talking about was very similar to the area of use set
19 forth in the San Antonio license. It is not similar to the
20 area of use in this license as best we can find out.

21 H.O. BROWN: This is rebuttal to Mr. Scalmanini?

22 MR. MALONEY: I am going to ask him about the question
23 about development of potential land in the Salinas Valley
24 floor based on some previous exhibits because that issue was
25 raised yesterday.

1 H.O. BROWN: This is rebuttal testimony.

2 MR. MALONEY: This is rehabilitation.

3 H.O. BROWN: Rebuttal testimony is limited to testimony
4 that has already been presented. It is not a chance for
5 additional direct.

6 MR. MALONEY: It is not additional direct. This is
7 rehabilitation on the issue of how much potential land can
8 be developed in the Salinas Valley. It is a very quick
9 piece of evidence I want to get in the record.

10 MR. O'BRIEN: Relating to vineyard development?

11 MR. MALONEY: Yes.

12 MR. O'BRIEN: On the floor of Salinas Valley?

13 MR. MALONEY: Yes, additional vineyard development on
14 the floor of Salinas Valley. These are questions he asked
15 yesterday.

16 I direct your attention to Tanimura & Antle's Exhibit
17 5, and I am looking at Page A4, some attachment prepared by
18 Montgomery & Watson, Appendix A of the SVIGSM model
19 extension and verification. This massive paper that Mr.
20 Scalmanini filed. It's just before T&A Exhibit 6.

21 H.O. BROWN: We will give you some rebuttal time, Mr.
22 Scalmanini.

23 MR. SCALMANINI: Thank you.

24 MR. MALONEY: It is a lot of paper.

25 Let's look at -- I have been looking at Page A4,

1 Forebay subarea. It shows nonirrigated ag and native
2 vegetation in 1995, 19,000 acres.

3 Is that correct?

4 MR. MERRILL: Yes.

5 MR. MALONEY: Then Upper Valley subarea, nonirrigated
6 ag and native vegetation shows 3,000 acres; is that
7 correct?

8 H.O. BROWN: Mr. O'Brien, you rise.

9 MR. MERRILL: Yes.

10 MR. O'BRIEN: Mr. Brown, This is rather perverse to
11 have Mr. Merrill testifying from a document prepared by Mr.
12 Scalmanini or submitted by Mr. Scalmanini. There is no
13 indication Mr. Merrill has any knowledge of what he is now
14 being asked to testify to. At a minimum we need to have
15 more foundation on that.

16 MR. MALONEY: We will get to that.

17 H.O. BROWN: I will permit this. See where you are
18 headed.

19 MR. MALONEY: Essentially, Mr. Merrill, you have seen
20 the list of acres there. Are you familiar with the Upper
21 Valley and the Forebay in Monterey County?

22 MR. MERRILL: Yes, generally so, yes.

23 MR. MALONEY: How long have you worked there?

24 MR. MERRILL: Since 1981.

25 MR. MALONEY: Are you familiar with what land is

1 currently under your -- currently being irrigated in the
2 Upper Valley and the Forebay?

3 MR. MERRILL: Generally so, yes.

4 MR. MALONEY: You looked at this report prepared by the
5 Agency's own engineer, Montgomery & Watson. I don't know if
6 they are still in existence. They prepared this report. It
7 essentially makes reference to this nonirrigated land.

8 Do you have any opinion as to what percentage of that
9 nonirrigated land in Forebay and the Upper Valley will
10 become vineyards of the 51,000 acres, I believe?

11 MR. MERRILL: I would think it would be a good portion
12 of it would be plantable to vineyard. The only exception
13 being perhaps some areas of native vegetation may get into
14 areas that are unplantable. I would see no reason why a
15 good portion of that could not be planted.

16 MR. MALONEY: Basically, when you look at Mr. Pyle's
17 testimony and you look at your testimony, you are talking
18 about a potential 130- to 150,000 developable acres of land
19 in the Upper Valley and the Forebay and the water
20 availability areas; is that correct?

21 MR. MERRILL: Yes. Substantially that is correct.

22 H.O. BROWN: Mr. Donlan.

23 MR. DONLAN: I think we will just ask it on recross.
24 Thank you.

25 MR. MALONEY: This is going to be a little more

1 controversial. I hope I am allowed to go into it.

2 H.O. BROWN: It's been a rather quiet morning.

3 MR. MALONEY: Mr. O'Brien suggested there might be
4 something wrong with the storage operation on San Bernabe
5 Vineyards, is that not correct, in your direct examination?

6 MR. MERRILL: I got that impression, yes.

7 MR. MALONEY: Do you believe that you are lawfully
8 storing that water?

9 MR. O'BRIEN: Objection. Lack of qualification as to
10 legal requirement for storing water.

11 MR. MALONEY: This was not a problem when Mr. O'Brien
12 was cross-examining.

13 Excuse me, I don't mean to interrupt Mr. O'Brien.

14 H.O. BROWN: Mr. O'Brien, are you through?

15 MR. O'BRIEN: I simply asked Mr. Merrill yesterday
16 whether they held storage permits for those reservoirs. I
17 did not attempt to get into the issue of whether that was
18 right or wrong. I simply got the facts out. He is now
19 asking for an opinion.

20 MR. MALONEY: We are about to demonstrate that we have
21 lawful rights to store the water on San Bernabe Vineyards.
22 And this becomes a major issue and will be used against us
23 politically and legally all over the place if that testimony
24 is allowed to stand there.

25 All we are saying is the offer of proof will be as

1 follows as to what he will testify to. Make the offer of
2 proof, that may solve -- whatever you want on this. I will
3 make an offer of proof as to what he will testify to.

4 H.O. BROWN: He will take time to get to the bottom of
5 the issue before a ruling is made.

6 Mr. O'Brien.

7 MR. O'BRIEN: If we open this issue up as to the water
8 rights of San Bernabe Vineyards, you have opened the issue
9 of water rights. And I didn't open the issue of water
10 rights. I simply asked him whether or not there was a
11 permit.

12 H.O. BROWN: Let me ask you this.

13 MR. O'BRIEN: Yes.

14 H.O. BROWN: You have water rights for appropriation
15 and diversion and riparian and such, but there is also a
16 water permit to store water. I visualize those as two
17 separate issues. If you are talking about a permit which is
18 required from the State Water Resources Control Board to
19 store water, I might allow that. If that is what you are
20 doing.

21 Is that correct, Ms. Katz, is that a water right in
22 itself rather than permit for storage?

23 MS. KATZ: That would be a post-1914 appropriative
24 water right. Maybe we can simplify some of this. The term
25 "water rights" has been thrown around for the last couple of

1 days during this hearing, and it tends to mean different
2 things at different times. Sometimes it is used as just a
3 claimed right. I have heard talk about vested rights. And
4 I think it might help clarify if the point of Mr. O'Brien's
5 question was did they have a permit, yes or no, that doesn't
6 necessarily go to the question of was or is a permit
7 required. We are just asking do they have one.

8 And maybe we could simplify for the record that that is
9 all Mr. O'Brien was asking, and we are not getting into
10 whether such a permit is required or who has what rights to
11 do what, especially since they are claimed rights.

12 H.O. BROWN: Good counsel, Ms. Katz.

13 If you are questioning whether or not a permit was
14 applied for or acquired, then I would allow that. But I do
15 not want to get into the water right itself.

16 MR. O'BRIEN: Thank you.

17 H.O. BROWN: On that basis --

18 MR. MALONEY: I understand. Could I have some
19 clarification questions so maybe we could speed this up, and
20 that would be it.

21 H.O. BROWN: Go ahead.

22 MR. MALONEY: There are two things, types of things
23 that are in play in connection with this storage issue. The
24 first question the way I see it, and I have been -- I heard
25 this discussion about this storage, lack thereof, et cetera,

1 in the Napa Valley. The big issue 35 years ago was do you
2 need a right to store regulatory water and what is
3 regulatory water.

4 MS. KATZ: That is not the issue here.

5 MR. MALONEY: I didn't say it was at issue here. We
6 believe that most of the storage or probably all of the
7 storage that is going on in San Bernabe and the testimony
8 will demonstrate that is regulatory storage. Therefore, no
9 permit is required to store the water. Now if Mr. O'Brien
10 will stipulate to that, we can go on.

11 H.O. BROWN: I am not sure that is correct.

12 Is that correct, Ms. Katz?

13 MR. MALONEY: Let me offer further evidence. We
14 believe that the storage is for less than 30 days as
15 determined by the Board as to what regulatory storage is as
16 the reservoir resources are being managed on San Bernabe.

17 H.O. BROWN: I understand.

18 MS. KATZ: We don't --

19 MR. O'BRIEN: Yesterday he said the water is
20 occasionally held for more than 30 days. If Mr. Maloney
21 wants to ask him the factual question and he wants to change
22 his testimony, he can do that in redirect. I don't have a
23 problem with the factual question.

24 What I have a problem with is when he asked Mr. Merrill
25 as to whether there were water rights and whether they were

1 within their water rights in operating the reservoir. That
2 is where I think we need to draw the line.

3 H.O. BROWN: Thank you, Mr. O'Brien.

4 Now, Ms. Katz.

5 MS. KATZ: I think anything I say would be redundant at
6 this point.

7 H.O. BROWN: Be redundant; that is okay.

8 MS. KATZ: It seems to me that there is two different
9 issues here. And Mr. O'Brien's initial question went to
10 whether they had a permit from the State Board, yes or no.
11 Not whether one was required, whether they think one is
12 required, whether they have any type of water right. And
13 the questioning now seems to be -- Mr. Maloney seems to take
14 that as perhaps an admission or problem or something that
15 now it is calling into question whether they need a water
16 right.

17 MR. MALONEY: Wait a second --

18 H.O. BROWN: Let her finish.

19 MR. MALONEY: She looked at me whether she was asking a
20 question.

21 H.O. BROWN: I am the one that directs it.

22 MS. KATZ: I don't think that it is appropriate to go
23 into who thinks they need a permit from the Board at this
24 point or not. We are not getting into the question of
25 adjudicating water rights or determining whether there is

1 unauthorized diversion that would need a permit from the
2 State Board.

3 So questions such as Mr. O'Brien was asking are
4 appropriate. But to the extent that we get into is a permit
5 necessary or what are they doing within the scope of their
6 alleged water rights or claimed water rights, I don't think
7 is appropriate.

8 H.O. BROWN: Thank you, Ms. Katz.

9 Now, Mr. Maloney.

10 MR. MALONEY: He asked the questions. He opens the
11 area up. But implication he represents the County of
12 Monterey. The County of Monterey is asking questions at a
13 public hearing about how we are storing this water. Now, we
14 should be able to respond how we are storing the water
15 directly. We will respond how we are storing the water.
16 The only issue here is storage of water. It is not the
17 right to divert the water or anything at all. He opens the
18 question up. All we want to do is offer testimony as to the
19 color title under which we are storing the water. Has
20 nothing to do with water rights, but to do with our right to
21 store the water and the conditions under which we are
22 storing the water.

23 MS. KATZ: That is a water right, the right to store
24 water.

25 MR. MALONEY: He opened the question up.

1 H.O. BROWN: Wait a minute. Don't get ahead of me on
2 this.

3 MR. O'BRIEN: I understand. I apologize.

4 H.O. BROWN: The question was asked, and I did get the
5 insinuation that there was doubt in the right to store water
6 that they were diverting.

7 Would you lay some foundation for that? What do you
8 mean by that, Mr. O'Brien?

9 MR. O'BRIEN: I really had no ulterior motive other
10 than to understand the nature of that storage that is
11 occurring. I think the best way to get out of this issue,
12 if Mr. Maloney wants to rehabilitate his witness on this
13 issue, all he has to ask him is the question whether they
14 are or they aren't storing water for 30 days or more. That
15 is the question I asked, and I got an answer that said, yes,
16 on occasion we store water more than 30 days.

17 If he now wants to change the answer to that, that's
18 his decision and I think that is as far factually that you
19 need to go. If you go the next step and get into what Mr.
20 Maloney wants to get into, then we start talking about the
21 nature of the claim of right under which that water is being
22 stored. I think that is where we ought to draw the line,
23 that is where you have consistently drawn the line in this
24 proceeding.

25 H.O. BROWN: Thank you, Mr. O'Brien.

1 Mr. Maloney.

2 MR. MALONEY: Your Honor, the 30-day issue I don't
3 think is applicable because we are talking about seasonal
4 storage. We have some regulation that is floating around
5 that everybody knows has problems.

6 He wants to establish in this record that we are
7 violating a regulation of the State Water Resources Control
8 Board. We are going to demonstrate we are not violating the
9 regulation of the State Water Resources Control
10 Board. There is a second problem, too.

11 H.O. BROWN: Wait a minute. Let's take one at a time.
12 How do you intend to show that?

13 MR. MALONEY: I am not sure that we are storing water
14 subject to the regulation in excess of 30 days. That is the
15 first thing.

16 H.O. BROWN: That is an easy question. I will permit
17 that.

18 MR. MALONEY: That is the first question. Then the
19 second question --

20 H.O. BROWN: Let's see where you are going before I do
21 permit it. If that is the singular question you are asking,
22 I would permit. Let's hear what the follow-up question is.

23 MR. MALONEY: Can I get him to answer that question
24 first?

25 H.O. BROWN: No. Give me the follow-up question

1 first.

2 MR. MALONEY: The second question is does he have any
3 -- in his opinion has he been advised that he has any rights
4 to store water on his property.

5 H.O. BROWN: That is all right.

6 MR. MALONEY: The third question is what was this
7 advice based on if he knows.

8 H.O. BROWN: That is not all right. I will allow the
9 first two questions. I don't want to get into the third
10 one. That will get you out of this, out of concern of
11 legality of the compliance.

12 MR. MALONEY: We still have a record here, your Honor,
13 where we have the County of Monterey by implications
14 suggesting we are doing something illegal.

15 H.O. BROWN: I am going to give those two questions to
16 nullify it in your mind.

17 Ms. Lennihan. Before I -- let's see what Ms. Lennihan
18 has to say.

19 MS. LENNIHAN: Mr. Brown, I don't want to complicate
20 matters further, but I do have to concur that at least the
21 second question goes beyond the scope of this proceeding.
22 And I would also like to submit, really, the issue of
23 whether there are or are not rights to store is not an issue
24 in this proceeding.

25 H.O. BROWN: I understand that. But the question was

1 asked, Ms. Lennihan, and he is responding to the question
2 that Mr. O'Brien asked.

3 MS. LENNIHAN: My recollection is that Mr. O'Brien
4 asked whether there was a permit and the answer I don't
5 remember, was no or I don't know. And if -- certainly if
6 Mr. Maloney wants to ask that factual question that I would
7 assume is permissible. But to go into the issue of whether
8 there has ever been advice on water rights is the same as
9 asking a water rights question. I would suggest that the
10 line be drawn somewhat narrower in order to avoid us
11 spending a lot of time on an issue that really isn't an
12 issue in this particular proceeding.

13 Thank you.

14 H.O. BROWN: Thank you, Ms. Lennihan.

15 All right, Mr. O'Brien. Ms. Lennihan said you just
16 asked if a permit was acquired. Is that your recall?

17 MR. O'BRIEN: That's correct. Whether they had
18 obtained a permit from the State Water Board for the
19 reservoir, and the answer was, no.

20 MR. MALONEY: Your Honor, we have two day -- a day
21 later definition of what went on in that transcript. That
22 transcript could cost us millions of dollars, because it
23 suggests that the County of Monterey thinks we are doing
24 something illegal.

25 We would like to rehabilitate the witness on that.

1 H.O. BROWN: Let's see if we can get the record
2 cleared up. If there is doubt here in what may have been
3 said or intended, could you stipulate to the record that you
4 were talking whether or not a permit was acquired?

5 MR. O'BRIEN: I would so stipulate.

6 H.O. BROWN: And it had no reference to water rights,
7 per se?

8 MR. O'BRIEN: I was talking about a permit from the
9 Water Resources Board. To the extent that involves the
10 issue of water rights, I am not sure I can stipulate.

11 H.O. BROWN: That's right. If he stipulates that he
12 was talking in reference to a permit only, if a permit was
13 acquired, would that satisfy you?

14 MR. MALONEY: Was acquired?

15 H.O. BROWN: Was acquired.

16 MR. O'BRIEN: Acquired.

17 MR. MALONEY: It doesn't satisfy me because of what
18 that record looked like yesterday. After we get through
19 making a decision on this, I will make an offer of proof why
20 we have the right to store water.

21 H.O. BROWN: No, I don't want to go that far, Mr.
22 Maloney. You are going to have to give me something less
23 than that.

24 MR. MALONEY: I would like to ask the two questions
25 that you -- the exact questions that you proposed about five

1 minutes ago that Ms. Lennihan objected to.

2 H.O. BROWN: Ask the first one. We will go from there,
3 and I am going to let you ask me the second one and I'll
4 reconsider it on whether or not I will allow it. Go ahead
5 and ask the first one.

6 MR. MALONEY: Do you know if you are storing water that
7 is in excess of 30 days that would legally require a license
8 to store water?

9 MR. DONLAN: Objection.

10 MR. O'BRIEN: Objection. The second half of the
11 question gets into the question you didn't want to get into.

12 MR. MALONEY: I would go back to the transcript. I
13 thought your questions were really good. I'd forgotten what
14 you asked.

15 H.O. BROWN: They weren't my questions, Mr. Maloney.
16 They were yours.

17 Let's take a 12-minute break. You gentlemen, the three
18 of you or the four of you, Ms. Lennihan, put your heads
19 together and see if you can come up with a solution for this
20 problem.

21 (Break taken.)

22 H.O. BROWN: We will come back to order.

23 I presume over the break you resolved those
24 differences.

25 MR. O'BRIEN: Unfortunately not, Mr. Brown.

1 MR. MALONEY: Your Honor --

2 H.O. BROWN: It is up to us to decide what we are going
3 to do. You have asked the first question. Let's hear the
4 second question again.

5 MR. MALONEY: I am so confused I can't remember the
6 questions I asked to begin with. You limited the questions
7 that we can ask.

8 Do you feel competent -- maybe this is the way to
9 handle this.

10 H.O. BROWN: Start over again.

11 MR. MALONEY: Do you feel competent to testify as to
12 when and/or how much or how long you're storing water in
13 reservoirs on San Bernabe?

14 MR. MERRILL: Generally competent. Generally
15 competent. But I would suggest the operations manager might
16 be a little more precise.

17 MR. MALONEY: We would at this point because we are not
18 allowed to go into full cross-examination on this issue move
19 that all the evidence, all the testimony that was elicited
20 on the issue of the storage, how it is being done, when it
21 is being done, been struck. We are willing to sit down and
22 make the following offer of proof. That we have pursuant to
23 the Treaty of Guadalupe Hidalgo rights to store water on our
24 land. We are the successors to the ranchos that were
25 created by the Mexican government between 1830 and 1845. We

1 will further offer proof that we had pre-1914 rights which
2 give us the right to store water on the land. And finally,
3 we will offer proof that this is merely maximum regulatory
4 storage in connection with the storage of water. And we are
5 not allowed to -- that is what our offer of proof would be.

6 H.O. BROWN: Mr. O'Brien.

7 MR. O'BRIEN: Mr. Maloney did not object yesterday when
8 I asked those questions. He waived his right to object to
9 the questions when he answered. We have given him an
10 opportunity to make whatever factual corrections he wishes
11 to make on the record on those issues. He made his record
12 with his offer of proof. He had the opportunity to ask
13 factual questions.

14 I continue to object to anything that relates to
15 opinions of this witness relating to the water right basis
16 for that storage. I think we ought to let the witness
17 answer the question whether there has or hasn't been storage
18 for more than 30 days. If he wants to ask that, then we
19 ought to move on.

20 MR. MALONEY: Can I respond?

21 H.O. BROWN: Yes.

22 MR. MALONEY: We did not object yesterday because we
23 felt to us objecting would emphasize the point and become
24 inflammatory. We felt under the rules of evidence that we
25 would be able to examine in detail all the questions and

1 rehabilitate our witness under questions that he'd answer
2 under cross-examination.

3 Failure for us to object yesterday is basically saying
4 this Board does not give us the right to rehabilitate our
5 witness. We were concerned about objecting. We were fully
6 aware of the issue yesterday and chose not to object for
7 that reason. Because we thought we could better
8 rehabilitate our witness through today when he was properly
9 prepared on the issue.

10 H.O. BROWN: Mr. Donlan.

11 MR. DONLAN: I would like to join in Mr. O'Brien's
12 objection and to also state for the record that if you do
13 allow this line of questioning I think you opened up a whole
14 battery of issues that you previously ruled on and also
15 going way beyond the scope of this proceeding and prejudice
16 parties that may or may not appear here for the limited
17 scope of this.

18 H.O. BROWN: Here is my intent, ladies and gentlemen.

19 I don't intend to allow that offer of proof, Mr.
20 Maloney. On the other hand, you did ask the question about
21 the right to store water or a permit. I need something to
22 help mitigate that position for Mr. Maloney. I am not
23 satisfied with what I have heard so far.

24 MR. O'BRIEN: I will stipulate to strike my question
25 regarding permit to storage in the reservoirs.

1 H.O. BROWN: Thank you, Mr. O'Brien.

2 MR. MALONEY: Your Honor, can we look over the
3 questions this evening that were asked yesterday and see if
4 we feel that will be enough to solve any potential problems
5 that we may have now or in the future because of questions
6 asked?

7 H.O. BROWN: I can see the -- Esther, the questions are
8 not available?

9 (Discussion held off record.)

10 H.O. BROWN: Mr. O'Brien, I would like that direction.
11 We will move to strike the question that you asked relating
12 to the storage of water and the right thereof as it may
13 relate, and I will leave it to you and Mr. Maloney to
14 straighten out the transcripts.

15 MR. O'BRIEN: I just want everyone to be clear that I
16 am willing to stipulate to striking that question as an
17 offer of good faith to moving the hearing along. I am not
18 willing to strike any of the other factual testimony
19 elicited from this witness.

20 H.O. BROWN: I understand, that is my intention.

21 Mr. Maloney, that is my ruling. Let's proceed.

22 MR. MALONEY: Thank you, your Honor.

23 Clarifications on the -- we had some questions about
24 vineyards developed in the Salinas Valley. And their
25 implication this is new to the Salinas Valley, not directly

1 but by tone of voice.

2 What I would like to do is make reference to some maps
3 filed with -- that came out of the Monterey County
4 Assessor's Office of the plats of the San Antonio Mission
5 and the plats of the Mission Soledad.

6 Could you tell me what exhibit number they are?

7 MR. VIRSIK: I believe 45 and 46.

8 H.O. BROWN: Mr. Donlan, you rise.

9 MR. MALONEY: Can we first identify these for the
10 record before we go any further?

11 H.O. BROWN: Let's see what Mr. Donlan has to say.

12 MR. DONLAN: I don't think tone of voice should give an
13 opening for him to put on water rights evidence. I think he
14 is using all kinds of excuses to get on what you told him he
15 can't get in. I would like to bring a stop to this whole
16 area.

17 The question was asked yesterday and now he is using
18 this as a catapult to get all kinds of water rights
19 information into the record. This has nothing to do with
20 harm and nothing to either of the other hearing issues.

21 H.O. BROWN: Thank you, Mr. Donlan.

22 MR. O'BRIEN: May I join that objection, Mr. Brown?

23 H.O. BROWN: Yes, you may.

24 Mr. Bezerra, did you rise?

25 MR. BEZERRA: I was just looking to find out what these

1 maps are, if they are new, to object to the fact we didn't
2 receive exhibits with sufficient time.

3 H.O. BROWN: Thank you.

4 MR. MALONEY: May I respond?

5 H.O. BROWN: Yes.

6 MR. MALONEY: This has absolutely nothing to do with
7 water rights. It's like we are not talking about water
8 rights. We are talking about wine. That is the first
9 thing.

10 The second thing is these maps are all public records.
11 We assumed that the county assessor and recorder would be
12 here to identify them. These have absolutely nothing to do
13 with water rights. What these have to deal with is
14 vineyards.

15 H.O. BROWN: What do you have there? I am not sure --

16 MR. VIRSIK: Let's identify the maps.

17 H.O. BROWN: Identify the maps that do what?

18 MR. VIRSIK: It would be Exhibit Tabs 45 and 46 so it
19 is clear what we are speaking of.

20 H.O. BROWN: What do these maps show?

21 MR. MALONEY: It shows in -- this is a map prepared by
22 United States of America, U.S. Survey, General Office San
23 Francisco, California. October 19, 1858, which is a plat of
24 the Mission San Antonio. This map shows orchards and
25 vineyards. It shows approximately 25, I think 25 or 30,

1 acres -- 33 acres.

2 And the second is a plat prepared by U.S. government,
3 the office of U.S. Surveyor, October 4th, 1858. Showing 34
4 acres. Showing approximately 20 acres of vineyard and
5 orchards, six and a half acres of vineyard of Mission
6 Soledad. I am going to give it to the witness to look at.

7 H.O. BROWN: Where are you headed with this?

8 MR. MALONEY: All I want to say is one more -- I have
9 him identify the maps and say this Upper Valley and the
10 Forebay were the beginnings of the wine industry in the
11 State of California. That is it.

12 H.O. BROWN: For what purpose?

13 MR. MALONEY: That was one of the reasons that the
14 vineyard production will become so large because it has been
15 marketed across the world.

16 H.O. BROWN: Mr. Donlan.

17 MR. DONLAN: It goes beyond the scope of Mr. Merrill's
18 testimony and well beyond the scope of any
19 cross-examination. I don't think it is permissible
20 redirect.

21 H.O. BROWN: Mr. Donlan has a point. I don't see where
22 they relate to rebuttal or point you are headed with this,
23 Mr. Maloney.

24 MR. MALONEY: The only point we are making, your
25 Honor, is a very simple question: This is where vineyard

1 production started in California. This is where the wine
2 industry in California started.

3 You are talking about balancing a public policy issue
4 when you are specifically asking questions of Mr. Merrill
5 and this is part of what we are going to be discussing
6 further on in this hearing and how we balance --

7 H.O. BROWN: Balancing public policy?

8 MR. MALONEY: In terms of how we balance the basin and
9 whose interests have to be modified and how you modify these
10 different interests. And this is part of the marketing
11 effort that is going on right now across the world. And if
12 you do not allow us to continue to develop this land, we are
13 wasting millions of dollars in marketing efforts throughout
14 the world in connection with Monterey County vineyard
15 production.

16 H.O. BROWN: Mr. Maloney, you may well indeed have a
17 issue. I don't know. But this is not the forum for that
18 issue. I don't want to pursue that direction in this
19 hearing.

20 Proceed with your rebuttal, please.

21 MR. MALONEY: Yesterday -- again, we allowed these
22 questions to go forward. I was fascinated they were allowed
23 to go forward, but who am I to tell what the other lawyers
24 are doing.

25 You were asked a bunch of questions about Napa. Last

1 night, did you, and this morning did you make any further
2 review of the situation in Napa in connection with People
3 versus Forni?

4 MR. MERRILL: Yes, I did.

5 MR. MALONEY: Did you make any further review of the
6 Charles B. See decision, Decision 1404 of this Board?

7 MR. MERRILL: Yes.

8 MR. MALONEY: Did you review -- I am not quite sure
9 where it is in this Board's record, but I will supply
10 everybody with the exact location of the agreement for
11 adjustment and settlement of water rights executed by
12 downstream landowners with the City of Napa in April 26,
13 1978.

14 It is my understanding this agreement has been
15 incorporated into the license which was issued to the City
16 of Napa in connection with the operation of Lake Hennessey,
17 and I will make reference to the exact application and
18 license number.

19 Did you review that agreement?

20 MR. MERRILL: Yes.

21 MR. MALONEY: In your --

22 H.O. BROWN: Mr. Maloney --

23 Ms. Katz, do you have some words of wisdom here?

24 MS. KATZ: You have already ruled, Mr. Brown, that we
25 are not going to be talking about the Napa Valley and the

1 reasonableness of the Napa Valley, whatever they are doing
2 with this frost protection.

3 I understand Mr. O'Brien asked Mr. Merrill questions
4 related to his written testimony as to whether he was
5 familiar with the case that he cited there, and I think this
6 is -- the questions here are designed to rehabilitate the
7 witness on those questions. But I think that they are going
8 far beyond what the scope of this hearing is.

9 H.O. BROWN: Mr. Maloney, Ms. Katz has a very solid
10 point here. I ruled on this Napa issue several times.

11 MR. MALONEY: I agree completely with Ms. Katz. I
12 absolutely agree a hundred percent.

13 H.O. BROWN: Where are you headed with this?

14 MR. MALONEY: I'm just rehabilitating my witness. My
15 witness was made to look like a fool by the Agency
16 yesterday. And what the record will show is that he should
17 not be considered -- we have to rehabilitate him on the
18 issue. The Agency brought the issue up. We are just
19 rehabilitating him on the issue. It goes to his credibility
20 and his competence.

21 He'd forgotten about a lot of things he was
22 cross-examined about yesterday. If he hadn't -- I was
23 amazed that people didn't jump up all over the place when
24 the Napa issue was raised. I assumed that that was totally
25 stricken from the remarks, based on your original rule. Now

1 we are faced with a situation where the record shows my
2 client looking like a fool because the questions were asked
3 of yesterday.

4 My client may be -- I am not going to talk about his
5 foolishness or not. We should be able to rehabilitate him.
6 It is going to his credibility on everything he said with
7 that testimony. I am just here to rehabilitate him; that is
8 all I am trying to do.

9 H.O. BROWN: Mr. O'Brien.

10 MR. O'BRIEN: May I suggest an approach? I did ask a
11 couple questions about the People versus Forni. I have no
12 problem whatsoever with Mr. Merrill explaining his thoughts
13 about the People versus Forni. I think that is perfectly
14 legitimate.

15 If we are going to go beyond that to other decisions
16 and agreements that Mr. Maloney has referred to, I think
17 that goes well beyond anything I asked yesterday and well
18 beyond the scope of this proceeding.

19 H.O. BROWN: Your client, as far as the chair is
20 concerned, is a credible witness. You have no problem with
21 his qualifications with the Chairman. If you think you have
22 to pursue something further than that, it is at your risk,
23 Mr. Maloney. But we have respect for your witness and his
24 accomplishments. There is no need, in my mind, to further
25 that in the record.

1 MR. MALONEY: I would like to go through this, but I
2 can't ask for much more out of the Chair in terms of a
3 witness, and I appreciate your attitudes and feelings
4 towards my client, and thank you.

5 H.O. BROWN: Proceed with your rebuttal and circumvent
6 this business of rehabilitating your client.

7 Mr. Donlan.

8 MR. DONLAN: Can I just clarify the record, we are on
9 redirect right now, aren't we?

10 H.O. BROWN: Rebuttal.

11 MR. DONLAN: Mr. Brown, you kept saying rebuttal and I
12 am getting confused. This is redirect?

13 H.O. BROWN: Yes, redirect.

14 MS. KATZ: We haven't gotten to rebuttal yet.

15 H.O. BROWN: Thank you, Mr. Donlan.

16 MR. MALONEY: At this time I have no further questions
17 of Mr. Merrill. I may call him back in connection with our
18 rebuttal case.

19 Thank you.

20 H.O. BROWN: Now we have recross.

21 Mr. O'Brien.

22 MR. MALONEY: Your Honor, can Mr. O'Brien limit his
23 recross to the issues governed by you order? I am objecting
24 to any -- so the record is perfectly clear on this, I did
25 not make those objections in his original recross because I

1 was afraid it would be inappropriate at the time to make
2 them when we could do a better job on rehabilitation.

3 H.O. BROWN: I have made very extensive notes of your
4 redirect. Mr. O'Brien would be limited to the redirect
5 questions by you, Mr. Maloney.

6 Mr. O'Brien, it's your turn.

7 ---oOo---

8 RECROSS-EXAMINATION OF SALINAS VALLEY PROTESTANTS

9 BY MONTEREY COUNTY WATER RESOURCES AGENCY

10 BY MR. O'BRIEN

11 MR. O'BRIEN: Mr. Merrill, are you generally familiar
12 with the history of the wine industry in California?

13 MR. MERRILL: Generally familiar, yes.

14 MR. MALONEY: Objection. We were going to put evidence
15 on about the history of the wine industry that showed that
16 the wine industry started in Monterey County and now we have
17 an --

18 H.O. BROWN: You have to be careful what you ask for, I
19 guess.

20 MR. MALONEY: What is going on?

21 MR. O'BRIEN: A foundational question.

22 MR. MALONEY: Excuse me.

23 H.O. BROWN: I am going to overrule the objection.
24 Answer the question.

25 MR. MERRILL: Generally familiar, yes.

1 MR. O'BRIEN: Would you agree that in the history of
2 the wine industry in California that industry has been
3 cyclical, in the sense of demand that absent flows?

4 MR. MERRILL: Yes.

5 MR. O'BRIEN: Would you agree --

6 MR. MALONEY: Objection. If we get into wine
7 industry's cyclical stuff we fully intend to put evidence on
8 against this cross-examination with Mr. Hornbeck,
9 discussing the whole land use issue in Monterey County, et
10 cetera. I want the record to be very clear that this
11 testimony is being allowed to continue.

12 Thank you.

13 H.O. BROWN: You haven't heard my objection or if I am
14 going to sustain or object.

15 The question, restate your question, Mr. O'Brien.

16 MR. O'BRIEN: Certainly. Let's just back up one step
17 and ask a preparatory question.

18 You stated now in your testimony that you project that
19 wine grape acreage in the Salinas Valley will increase by
20 what number over the next 20 years?

21 MR. MERRILL: Well, we had basically -- my projection
22 is not unreasonable that we will increase by 100,000 acres.
23 That was over 30 years. I don't know that I have fine-tuned
24 that much. I said 30 years.

25 MR. O'BRIEN: About 100,000 acres?

1 MR. MERRILL: Yeah.

2 MR. O'BRIEN: Now, I believe in answer to my previous
3 question you indicated that the wine industry in California
4 is historically cyclical in nature, correct?

5 MR. MALONEY: Objection. We are getting into history
6 again, your Honor. We will have a historian who will talk
7 about the history of agricultural production, and that
8 historian will show all sorts of strange things in Monterey
9 County.

10 H.O. BROWN: I disagree, Mr. Maloney. I think it is a
11 very proper question for this witness.

12 You may answer it.

13 MR. MERRILL: The question was, is it cyclical?

14 MR. O'BRIEN: Correct.

15 MR. MERRILL: Yes, to some degree it is cyclical.

16 MR. O'BRIEN: Would you also agree that we are
17 currently in a period of high demand for wine grapes?

18 MR. MERRILL: A period of high demand for wine grapes,
19 I would agree with that, yes.

20 MR. O'BRIEN: Would you also agree that that high
21 demand is related to various factors, including for example
22 consumer taste? Would that be a factor in the current
23 demand for wine grapes?

24 MR. MALONEY: Objection. I see no reason to get into
25 consumer taste on a hearing on what -- this hearing. What

1 we are doing is we are opening this thing very, very
2 broadly. And what it's going to force me to do is to not
3 only rehabilitate, but put on direct evidence on all these
4 issues. I think this is well beyond the scope of the
5 hearing. But if we want to get into this, I am more than
6 willing to put on evidence.

7 H.O. BROWN: Mr. O'Brien is asking very appropriate
8 questions for the redirect. I follow your line of
9 questioning, and it is being permitted.

10 Proceed.

11 MR. MERRILL: What is the last question?

12 MR. O'BRIEN: I am just trying to get at the various
13 factors that go into the current high demand for wine
14 produced in California, and I am trying to elicit your
15 testimony as to what you think the various factors are that
16 play into that demand.

17 Perhaps I should just ask you that.

18 Could you tell me what factors, in your opinion, create
19 this high demand currently?

20 MR. MERRILL: I think I covered that in my -- when I
21 was speaking before, that there is general trends toward
22 higher quality wines. You might put quote marks around
23 quality. Essentially that means wines that store longer,
24 wines that have better flavors, wines that have moderate pHs
25 and good acid balance. Characteristics generally associated

1 with fine wines. There is increasing demand, and there has
2 been for a significant period of time, which tends to push
3 the demand toward the type of wine grapes that are produced
4 in Monterey County.

5 MR. O'BRIEN: Would one factor creating such demand be
6 the economy, in your mind?

7 MR. MERRILL: The economy is a factor.

8 MR. O'BRIEN: Are you aware of any instances in the
9 history of California wine industry in which vineyard
10 acreage has been taken out of vineyard production due to
11 economic circumstances?

12 MR. MERRILL: In California, I am talking about the
13 state, there may have been instances where pure economics,
14 meaning supply and demand and price, was the primary reason
15 that a vineyard was removed from production. To my
16 knowledge, in Monterey County that has not been the sole
17 reason that it has been removed, but rather a combination of
18 other factors which could include vine health, vine age, in
19 which case the price was merely one of the factors that
20 contributed.

21 MR. O'BRIEN: Thank you.

22 H.O. BROWN: Thank you, Mr. O'Brien.

23 Mr. Donlan.

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CROSS-EXAMINATION OF SALINAS VALLEY PROTESTANTS

BY TANIMURA & ANTLE

BY MR. DONLAN

MR. DONLAN: I just want to clarify one statement you made there when you were being rehabilitated.

You stated that San Bernabe has been paying taxes for the water that it would use in recently developed lands. I believe the context was in the discussion of an assessment zone boundary 2A.

MR. MERRILL: Right.

MR. DONLAN: Were you saying that they were paying taxes or assessments within Zone 2A or within and outside Zone 2A?

MR. MALONEY: Objection. This is beyond the scope of his knowledge.

MR. DONLAN: He made a statement.

H.O. BROWN: Try the question again.

MR. DONLAN: Does San Bernabe pay assessments on lands outside of Zone 2A for Zone 2A?

MR. MALONEY: Wait a second.

H.O. BROWN: What is the objection?

MR. MALONEY: I am not sure I heard the question correctly.

MR. DONLAN: I can be more specific, if you like.

MR. MALONEY: Could you.

1 MR. DONLAN: You were not suggesting that San Bernabe
2 was paying Zone 2A assessments on lands outside of Zone 2A?

3 MR. MALONEY: Objection. It assumes a fact not in
4 evidence, that San Bernabe has any land outside of Zone 2A.

5 H.O. BROWN: I don't believe that was in redirect.

6 MR. MALONEY: I am not sure. I am not sure we got into
7 2A assessments at all.

8 MR. DONLAN: He said they have been paying assessments
9 for water.

10 MR. MERRILL: I didn't really say that. I think what I
11 said was a general statement when I think Mr. Brown was
12 asking me as to would the, I guess, a group of grape growers
13 or a group or some group be willing to consider paying for,
14 I think, new sources of water or structures or something to
15 accommodate this growth in the wine industry. And I think
16 my reply was that a good many of these lands have been in
17 various districts that now envision planting grapes, and
18 that it was my personal statement, my personal belief, that
19 if there had been assessments paid within those zones it
20 would be rather silly to be thinking that you would be
21 paying all these years and you would be precluded from ever
22 using any water to irrigate crops.

23 All I was saying, was basically that it is not like we
24 having been sitting all these years, not paying anything,
25 whether it's bonds for the dam or whatever it is. I am not

1 saying we are paying for water. I am saying there has been
2 property tax payments made of which zone charges are
3 included on the tax bill that are higher than if you were
4 outside these zones. Presumably at some point there should
5 be some benefit for that.

6 MR. DONLAN: Within the zone?

7 MR. MALONEY: Objection. You are asking for a legal
8 conclusion of the witness now.

9 MR. MERRILL: I don't know where the zones go. They
10 don't go where these lands are. I just know a bunch of them
11 are on whatever zone you want to use. I know these are
12 lands within those boundaries.

13 H.O. BROWN: When your attorney makes an objection you
14 may want to wait until it is ruled on, but it is your
15 choice.

16 MR. MERRILL: Okay.

17 MR. MALONEY: I think this is well beyond the scope of
18 this water hearing. People pay taxes to President Clinton.
19 I don't know if he is going to solve the water problems of
20 Salinas, or taxes to State of California, taxes to
21 everybody. What does that have to do with -- people are
22 paying taxes. These zones have nothing to do with who has
23 water or who doesn't have water. These are just figments of
24 somebody's imagination. We are not even talking about zones
25 here. We are talking about areas of use. I think all this

1 stuff should be stricken.

2 H.O. BROWN: I would -- I am thinking probably to your
3 benefit, these questions. Are you sure?

4 MR. MALONEY: I think I know the questions I am
5 objecting to.

6 H.O. BROWN: It sounds to me like this might benefit
7 your position. Are you sure you want it stricken?

8 MR. MALONEY: Yes.

9 H.O. BROWN: What is your response?

10 MR. DONLAN: What are we talking about striking?

11 H.O. BROWN: Mr. Maloney, what are you talking about
12 striking?

13 MR. MALONEY: I don't know why we are dealing with --
14 we have simple testimony. He believes that if you are a
15 taxpayer, you ought to get some benefit. Everybody believes
16 that. That is his basic testimony, you know.

17 And we are getting into zone lines and whether stuff is
18 in zones or outside of zones.

19 H.O. BROWN: That is enough. Ask the question and I
20 will determine whether you are going to get the information.

21 MR. DONLAN: Maybe it is best that I just withdraw the
22 question. I didn't think it was that difficult given that
23 it was in response to a statement made by Mr. Merrill. But
24 for the sake of moving this along, I will withdraw the
25 question.

1 H.O. BROWN: Thank you, Mr. Donlan.

2 Mr. Bezerra.

3 MR. BEZERRA: Thank you, Mr. Brown. I think I just
4 have a couple questions.

5 RE-CROSS-EXAMINATION OF SALINAS VALLEY PROTESTANTS

6 BY CLARK COLONY WATER DISTRICT & TANIMURA & ANTLE

7 BY MR. BEZERRA

8 MR. BEZERRA: Mr. Merrill, if glassy-winged sharp
9 shooters were found in Monterey County would that affect
10 your estimate of the growth of the vineyards in that county?

11 MR. MALONEY: Objection, your Honor. This is beyond
12 the scope of the -- glassy-winged sharp shooters are a major
13 issue in the State of California that Mr. Merrill is deeply
14 involved in it, fighting it with every waking hour of the
15 day, except when he has to testify before the State Water
16 Resources Control Board.

17 I do not think we want to get into the glassy-winged
18 sharp shooter in this particular hearing. Maybe Mr. Meinz
19 wants to have them, but I don't think we should get into
20 them.

21 Mr. Merrill is testifying before the world on this. He
22 meets with President Clinton, whoever the governor is and
23 the whole world.

24 H.O. BROWN: I would really like to hear from your
25 witness. You have been doing a lot of testifying. I prefer

1 to hear from Mr. Donlan.

2 Ask the question again.

3 MR. BEZERRA: Sure, thank you, Mr. Brown.

4 If the glassy-winged sharp shooter were found in
5 Monterey County, would that affect your estimate of the
6 future growth of vineyards in that county?

7 MR. MERRILL: Glassy-winged sharp shooters, per se, are
8 infected with a bacteria called Pierce's disease which then
9 becomes the problem. A major advantage of Monterey County
10 is there never has been any confirmed experience with
11 Pierce's disease in the county. So the fact that the sharp
12 shooter would show up would only be part of the equation.
13 You have to have the disease. It would have to be a couple
14 of steps.

15 In other words, my answer is the glassy-winged sharp
16 shooter, per se, would not.

17 MR. BEZERRA: Let me ask the question again. I think
18 it is a yes or no question. If glassy-winged sharp shooters
19 were found in the Monterey County, would that affect your
20 estimate of future growth of vineyards?

21 MR. MERRILL: Not in and of itself it would not. We
22 have other sharp shooters. Sharp shooters are not -- the
23 glassy-winged gets all the publicity. There are other sharp
24 shooters in the coastal counties. In fact, Napa has had
25 sharp shooters for many years, blue-green sharp shooters

1 that have spread Pierce's disease. We have blue-green sharp
2 shooters, and we don't have Pierce's disease. I don't think
3 they automatically follow each other. If you have both, you
4 definitely would be more at risk.

5 MR. BEZERRA: You're concerned with the continued
6 spread of the glassy-winged sharp shooters specifically
7 across the state?

8 MR. MERRILL: That's right.

9 MR. BEZERRA: It would concern you as someone in the
10 wine business if glassy-winged sharp shooters were to be
11 found in Monterey County?

12 MR. MERRILL: It would concern me.

13 MR. BEZERRA: As people who invest large sums of money
14 in vineyards, if glassy-winged sharp shooters were found in
15 Monterey County, would that affect the investment decisions
16 as to growth of the vineyards in that county?

17 MR. MERRILL: Could be.

18 MR. BEZERRA: Thank you very much.

19 H.O. BROWN: Thank you, Mr. Bezerra.

20 Ms. Lennihan.

21 MS. LENNIHAN: Absolutely no questions, Mr. Brown.

22 H.O. BROWN: Thank you, Ms. Lennihan.

23 That completes --

24 MR. MALONEY: May I also ask one question, your Honor?

25 H.O. BROWN: You will have rebuttal?

1 MR. MALONEY: One question on the glassy-winged issue.

2 H.O. BROWN: Objections?

3 Go ahead and ask the question.

4 MR. MALONEY: How much of your time do you spend
5 dealing on a statewide basis with the glassy-winged sharp
6 shooter issues?

7 MR. MERRILL: Probably on a continual basis is probably
8 25 percent of my time. Some weeks it is much higher than
9 that.

10 MR. MALONEY: Do you think you will be able to keep the
11 effects of the glassy-winged sharp shooters and Pierce's
12 disease out of Monterey County?

13 MR. MERRILL: I think we have the best chance of any
14 place in the state. Can't guarantee. I think we have
15 reasonable chance.

16 MR. MALONEY: Thank you, your Honor.

17 H.O. BROWN: I will give a chance for rebuttal on those
18 two questions if anyone has one.

19 Staff.

20 Do you have some exhibits that need to be admitted into
21 evidence now?

22 MR. VIRSIK: Move to admit into evidence various
23 exhibits. And starting from the exhibit identification
24 index submitted with the filings originally, and we are
25 going to withdraw several. And what I propose to do is to

1 read which ones we are offering and which ones have been or
2 that we are going to withdraw. And then whatever the
3 objections may be, can be addressed.

4 H.O. BROWN: Okay.

5 MR. VIRSIK: If that is acceptable.

6 H.O. BROWN: That is fine.

7 MR. VIRSIK: As to Exhibit 1, we already have the
8 ruling from your Honor that that is not into evidence but a
9 map comprising the client areas.

10 H.O. BROWN: Exhibit 1 is in or out?

11 MR. VIRSIK: Is out is my understanding based on the
12 ruling of the Board. Not withdraw but the ruling of the
13 Board.

14 That was the one -- Ms. Katz looks quizzical -- that
15 had the water rights claims.

16 H.O. BROWN: Yes.

17 MR. VIRSIK: Water rights claims on it.

18 H.O. BROWN: Exhibit 1 is out.

19 MR. VIRSIK: Exhibit No. 2, that is the Protestants'
20 lands and soil types. We are going to move to admit.

21 Exhibit 3, that is a map, modified '89, '91 land use
22 within Protestants' lands. We are going to move to admit.

23 Exhibit No. 4, the land above the Salinas Valley floor.
24 We are going to move to admit.

25 Exhibit 5, which is a series of tables regarding the

1 slope and soil classification area. We are going to move to
2 admit.

3 Six we are not going to move to admit.

4 I believe there was a ruling as to Exhibit 7, 8 and 9
5 previously. There was actually a ruling to Exhibit 7. We
6 stipulated that the same ruling would apply to Exhibits 8
7 and 9 of that series, and my understanding is those,
8 pursuant to the ruling of the Board, are not in.

9 Moving forward.

10 We are not offering Exhibit 10. We may or may not
11 offer it in rebuttal.

12 Exhibit 11 we are moving in, which is the report of the
13 Bureau of -- a map from the -- report of the Bureau of
14 Soils, U.S. Department of Agriculture.

15 Twelve --

16 MR. LONG: Excuse me. I would like to point out that
17 VP 11 is the same as SVP 25?

18 MR. VIRSIK: Correct. Two physically different things,
19 but they represent the same map.

20 H.O. BROWN: The description is Exhibit 11?

21 MR. VIRSIK: Eleven is --

22 H.O. BROWN: Is in?

23 MR. VIRSIK: We are moving for admission, correct.

24 Exhibit 12, the Department of Interior, the USGS.

25 There are three maps of surveys from 1908 to 1912. We move

1 to admit subject to, obviously, objections.

2 H.O. BROWN: Exhibit 12?

3 MR. VIRSIK: In.

4 H.O. BROWN: Twelve A, B and C?

5 MR. VIRSIK: We have sheets numbered 1, 2, and 4

6 because the USGS marked them.

7 H.O. BROWN: 12.1 and 12.2 and 12.3.

8 MR. VIRSIK: Correct.

9 Exhibit 13 a report on an investigation of water supply
10 requirements for vineyard frost protection in Napa County.

11 We are moving to admit. We perceive that the ruling of the
12 Board will prevent admission, but we are not waiving
13 offering it.

14 14, report on Reclamation District 1665. We are moving
15 to admit.

16 Exhibit 15 has previously been withdrawn by letter sent
17 about two weeks ago.

18 Moving to admit the deposition of Joseph Madruga which
19 is 16, if I did not say that.

20 Moving to admit the supplement declaration of Peter
21 Pyle in support of plaintiff's motion for production of
22 water data. This is not a declaration that was submitted in
23 connection with any of the motion to quash proceeding, just
24 to be clear about that. A separate declaration. Moving to
25 admit.

1 The written testimony of Robert L. Hoover, we are
2 withdrawing, which is 18.

3 Testimony of Dana Merrill, 19. Moving to admit.

4 Exhibit 20 testimony of Peter Pyle, we are moving to
5 admit.

6 21, which does not carry a title, but is a -- consists
7 of the ranch histories of the Salinas Valley Protestants.
8 We are moving to admit subject to an understanding there may
9 be objections or rulings of the Board that may have an
10 effect on its admission.

11 Exhibit 22, which is the minutes of a Agency board
12 meeting which was submitted last week, we are moving to
13 admit.

14 Exhibit 23 which is the letter of Mr. Sabiston from
15 1960, we are moving to admit.

16 Exhibit 24, a correspondence between the Monterey
17 County, at the time, Flood Control and Water Conservation
18 District and this Board, arising 1955. We are moving to
19 admit.

20 25, as Mr. Long pointed out, is simply another physical
21 copy of what is Exhibit 11. We can move to admit that
22 simply because it may be a better copy, but it is
23 duplicative.

24 And Exhibit 26, which is a map from a USGS soils
25 survey, we are moving to admit as well.

1 Also, we had intended and will for purposes of clarity
2 of the record move to admit the protest exhibits that had
3 been submitted on May 5th, 2000, which had been referenced
4 by incorporation at the bottom of the exhibit identification
5 sheet. And those presently, again for purposes of clarity
6 of the record, consist of Exhibits 27 through, I believe it
7 is, 39, as far as the tabbing is concerned of the other
8 volume that had been submitted.

9 H.O. BROWN: 27 through 39?

10 MR. VIRSIK: Correct. We understand the Board's prior
11 ruling last week with regard to that material as part of the
12 Board's Exhibit 2. It was offered, but not admitted because
13 of an objection by one of the parties.

14 H.O. BROWN: All right.

15 MR. VIRSIK: We are, of course, not waiving our
16 ability to submit further evidence on rebuttal and/or to
17 submit any of the evidence that is not admitted upon the
18 Board's ruling in rebuttal should the need arise.

19 Just to be absolutely clear on the map exhibits,
20 Exhibit 2 and several other ones, we are submitting the
21 versions that have the cross-hatching marks where the
22 Rosenberg lands lie just to make sure that there is no
23 qualms about that by the parties.

24 H.O. BROWN: Revised Exhibit 2.

25 MR. VIRSIK: We are physically revising Exhibit 2 and

1 actually all the exhibits are physically revised with the
2 cross-hatching marks.

3 H.O. BROWN: That is 2, 3, 4 and 5?

4 MR. VIRSIK: Correct.

5 H.O. BROWN: Is that it?

6 MR. VIRSIK: That is all, your Honor.

7 MR. LONG: Excuse me. You just offered 37 through 39?

8 MR. VIRSIK: Correct.

9 MR. LONG: That leaves us 40 through 47?

10 MR. VIRSIK: Yes, it does. Except there is also, which
11 we are not moving into evidence, there is a 48 that was
12 submitted today, and those will be in rebuttal, or I am not
13 addressing them right now, in other words.

14 H.O. BROWN: 40 through 47 is out and 48 is out for the
15 time being?

16 MR. VIRSIK: Correct.

17 H.O. BROWN: You have offered into evidence:

18 Exhibits 2, 3, 4 and 5 as revised with the
19 cross-hatching.

20 Exhibit 11, Exhibit 12.1, 12.2 and the 12.3.

21 Exhibits 13, 14, 16, 17, 19, 20, 21, 22, 23, 24, 25,
22 26, and Exhibits 27 through 39.

23 Are there any objections to the offer of those exhibits
24 into evidence?

25 MR. O'BRIEN: I would object on grounds of lack of

1 relevance to the number 12 exhibits, 12.1, 12.2 and 12.3; to
2 Exhibit 13; Exhibit 14; Exhibit 21, which is the ranch
3 histories; Exhibit 23, which is the Sabiston letter;
4 Exhibit 24, which is the 1955 correspondence to the State
5 Board; and all of the Exhibits 27 through 39 on the grounds
6 of relevance.

7 H.O. BROWN: All right.

8 Mr. Bezerra, does that cover your objections?

9 MR. BEZERRA: For the most part. I did want to add a
10 couple things, couple of grounds, as to 21 and 27 through
11 39.

12 As to the 2, 3, and 4, I don't exactly have objection,
13 but I would quite appreciate it if the maps could be marked
14 with a key to demonstrate on the map what the cross-hatching
15 means rather -- just recognize that the record of this
16 providing will be quite voluminous. I think it would be
17 helpful to everyone if the maps themselves demonstrate that
18 the cross-hatching shows the Rosenbergs are not in those
19 properties.

20 MR. VIRSIK: We have no problem with that. We can just
21 handwrite a legend saying lands withdrawn during course of
22 hearing or some such thing.

23 MR. BEZERRA: What I prefer it says is that Rosenberg
24 Family Ranch not included within Protestants' lands just to
25 make it clear.

1 MR. VIRSIK: We're just taking the representation that
2 those are Rosenberg lands. We do not want to make a record
3 from our clients' perspective that is or is not the
4 Rosenberg ranch because there is a decree. I don't want to
5 travel on this again.

6 We are accommodating the Rosenbergs. We have
7 physically redacted. We can say land purported to be
8 Rosenberg property withdrawn during course of hearing.

9 Is that sufficient?

10 MR. BEZERRA: My concern, Mr. Brown, is that this
11 decree that they have talked about, they don't know what it
12 means, what it says. It is an exhibit to this hearing.
13 It's been a publicly reported document for several years.
14 They had plenty of time to look at it and to understand what
15 properties are or are not within the Rosenberg Family Ranch,
16 are or are not within the Duflock Family Ranch.

17 This is the one issue that really bothers my clients is
18 when are we going to stop having the Rosenberg Family Ranch
19 included within the Protestants' lands. I simply ask that
20 it --

21 H.O. BROWN: What would satisfy you on these maps so
22 we can admit that in evidence? What will satisfy you?

23 MR. BEZERRA: I think it should state that
24 cross-hatching refers to lands of Rosenberg Family Ranch not
25 included within the Protestants' lands.

1 H.O. BROWN: That is what I thought I heard.

2 MR. VIRSIK: Subject to the decree which Mr. Rosenberg
3 put into evidence. I don't want to prejudice my clients'
4 right under the decree. Whatever it says. I don't want to
5 argue what it does or doesn't say, as long as we have it
6 pursuant to the decree offered by Mr. Rosenberg. I am not
7 going to take a position of what it does or doesn't say. It
8 is part of evidence Mr. Rosenberg offered. It is fine.

9 MR. BEZERRA: It specifically refers to the decree and
10 the recording information of the decree. It speaks for
11 itself.

12 MR. VIRSIK: That is fine. I don't really want to
13 spend any more time on this particular issue.

14 MR. BEZERRA: Neither do I.

15 H.O. BROWN: What does the legend say now?

16 MR. BEZERRA: At this point, Mr. Virsik and I can work
17 it out. We will bring it back to the Board if that is
18 sufficient.

19 H.O. BROWN: All right. You work it out at lunch. The
20 first thing after lunch tell us what to put on the legend.

21 MR. VIRSIK: Put it on the record.

22 MR. BEZERRA: I have a few more exhibits that I had
23 objection to.

24 SVP-5, as to Subsection 2(b), the witness stated that
25 those properties included the properties of Rosenberg Family

1 Ranch, and he would have to recalculate those numbers in
2 order to withdraw the Rosenberg Family Ranch. They are
3 inaccurate and lack of foundation.

4 MR. VIRSIK: The witness' testimony was that to the
5 extent there is an error it actually wouldn't make any
6 difference; it is de minimis. His testimony was a portion
7 of what purports to be the Rosenberg Ranch may have been
8 included, according to the map, within the ability of the
9 digitizing to accommodate slight differences.

10 H.O. BROWN: Triangular portion of --

11 MR. VIRSIK: Little triangular corner, correct. I
12 don't think that vitiates its foundation or reliability.

13 MR. BEZERRA: I think the witness admitted it was
14 inaccurate, that he was instructed as to what to include and
15 not to include and did not do it out of his own knowledge.

16 H.O. BROWN: We have enough information on the record
17 from both you gentlemen that it will go to the weight of the
18 evidence.

19 MR. BEZERRA: Thank you, Mr. Brown.

20 Then as to SVP-21, when that was submitted to the other
21 parties, it was referred to as a rebuttal exhibit. It was
22 not included within the primary exhibits submitted to this
23 hearing. There has been no witness to testimony, to
24 authenticate it, nor to provide any foundation for the
25 statements made within it, which are at best hearsay. I

1 would object to that on lack of foundation, on hearsay and
2 on unfair surprise.

3 H.O. BROWN: All right.

4 Anything else?

5 MR. BEZERRA: And I have similar objections as to 27
6 through 39 which were produced yesterday to the parties,
7 were not supported by the testimony of a witness and have no
8 foundation.

9 H.O. BROWN: Okay. Thank you.

10 MR. BEZERRA: I think that covers it.

11 Thank you, Mr. Brown.

12 H.O. BROWN: You're welcome.

13 Ms. Lennihan.

14 MS. LENNIHAN: Thank you, Mr. Brown. Martha Lennihan
15 for the East Side Water Alliance.

16 Let me go through the list of exhibits to which we
17 object and in some instances make points of clarification.
18 For the most part, our objections are similar to those
19 already articulated: i.e., irrelevant, lack of foundation,
20 in a number of instances they are not supported by the
21 testimony of any witness and are hearsay.

22 The exhibits are No. 5, to which we object only to the
23 extent that it has water rights descriptions on it which I
24 think the Salinas Valley Protestants may be willing to
25 redact the vested lands boundary, that type of terminology

1 which goes to the water rights issue.

2 Number 11 and 25, which are the same exhibit, No. 12,
3 No. 13, 14.

4 H.O. BROWN: 12 is all three parts, 12.1, 12.2 and
5 12.3?

6 MS. LENNIHAN: Yes.

7 14, 17, 21, which is the ranch histories as earlier
8 stated is a surprise set of --

9 H.O. BROWN: 17 is a new number.

10 MS. LENNIHAN: 17 is the supplement declaration of
11 Peter Pyle which was -- which I don't know much about. It
12 was not testified to by Mr. Pyle and is irrelevant.

13 21, about which I already spoke.

14 23 which is the letter of Mr. Sabiston.

15 24 which is 1950s correspondence.

16 Then 25 which is the same as 11 and we've already
17 discussed.

18 And finally, the group of Protestants' Exhibits 27
19 through 39, which were not produced in accordance with the
20 rules of the Board for prehearing testimony.

21 H.O. BROWN: Okay.

22 Any other objections?

23 MR. DONLAN: I join in all those objections on behalf
24 of Tanimura & Antle.

25 MR. O'BRIEN: Mr. Brown, may I supplement my objections

1 simply to join in the various grounds stated by Ms. Lennihan
2 and Mr. Bezerra?

3 H.O. BROWN: All right.

4 MR. O'BRIEN: Thank you.

5 H.O. BROWN: Any comment?

6 MR. VIRSIK: Let me make responses to various ones.

7 Exhibit 21, we are going to withdraw at this time. We
8 may put it in rebuttal, may not. Dispose of that right
9 now. Not withdraw, we are not offering it into evidence.

10 H.O. BROWN: Not offering for the time being.

11 MR. VIRSIK: I already responded with respect to
12 Exhibits 2 through 4. That is the maps. Mr. Rosenberg will
13 figure that out.

14 With respect to Exhibit 5, which is a Rosenberg -- two
15 objections. A Rosenberg objection, which I believe your
16 Honor already resolved about the weight of evidence. The
17 second objection was the description of water rights
18 description. We can change that. I think that was part of
19 the record, actually, that the legend description would be
20 changed to water use or something along those similar
21 lines. I think we can meet the objections as to 5.

22 I am going to skip around a little bit as my notes
23 indicate.

24 On objection to Exhibit 17, which is a separate
25 declaration of Peter Pyle. Two responses. One, Mr. Pyle

1 testified that he had reviewed his testimony exhibits and
2 they were accurate. And two, during his direct testimony he
3 relied on one of the attachments to that exhibit about
4 reservoir inflows or releases. I don't recall what it was.
5 Relying on data supplied by the Agency, and I believe he
6 referenced it during his direct testimony. He may not have
7 said this is Exhibit 17, page so-and-so that I am talking
8 about. He talked about the data he received and was
9 referring to, is my best recollection of his evidence. I
10 would say there is nothing objectionable about it on that
11 basis.

12 With respect to the collective Exhibit 12, which is
13 12.1, .2 and .3, three maps, we are going to -- we are not
14 offering at this time. We are going to possibly withdraw it
15 -- offer it in rebuttal if the case may be. So we need not
16 travel on those.

17 Exhibit 13, I think I indicated that that is potential
18 subject to the Board's ruling, which is a report on the
19 frost protection system in Napa, and Mr. Merrill does, in
20 fact, reference that exhibit in his written direct testimony
21 and he spoke of it, I think very briefly, during his oral,
22 might have been cross. It may have been direct. I don't
23 recall. But I have no further response to Exhibit 13.

24 Exhibit 14, we are going to withdraw at this time,
25 subject to offering during rebuttal, subject to objection.

1 Exhibit 23, which is the letter of Mr. Sabiston, I
2 believe there was objection as to relevance. I think --
3 might have been a lack of -- that we had not produced it in
4 time, I believe was the other type of objection. I think it
5 was raised by Ms. Lennihan, or so my notes indicate. A
6 timeliness objection, if I understood. It was introduced on
7 cross-examination, first of all.

8 Second of all, as to relevance, Mr. Pyle equated that
9 letter with -- the content of that letter, Mr. Sabiston's
10 opinion with the USGS boundary which is sketched on one of
11 these maps, finding that the USGS boundary is consistent
12 with a letter, not official, written by an employee of
13 State Water Resources Control Board 40 years ago. That is
14 additional support for the reasonableness of him relying on
15 the USGS line that is contained on one of the maps.

16 And Exhibit 24, which is the correspondence in the mid
17 '50s between the -- among the Agency and the State Water
18 Resources Control Board. That had been offered in
19 cross-examination to Mr. Madruga regarding reservoir
20 operations. That is probably properly a rebuttal exhibit
21 because we had taken Mr. Madruga out of order based on the
22 representations -- accommodations of counsel.

23 H.O. BROWN: 24?

24 MR. VIRSIK: 24. Presumably that should wait for
25 rebuttal. Looking at it a second time.

1 That will leave us, I believe, with Exhibits 27 through
2 39.

3 H.O. BROWN: 25, 26.

4 MR. VIRSIK: 25 is the map from 1901, from 1901 soils
5 report, which was used in cross-examination of Mr.
6 Scalmanini which -- I am trying to remember what the -- the
7 objection was as to relevance, if I recall.

8 H.O. BROWN: Ms. Lennihan, was it not?

9 MR. VIRSIK: Ms. Lennihan's objection.

10 MS. LENNIHAN: I did object.

11 MR. VIRSIK: It is relevant certainly to the history of
12 Salinas Valley. Mr. Scalmanini was testifying that he had
13 reviewed those Salinas Valley through the later -- on the
14 second version of cross determined 1944. And the first part
15 of cross before it was cut was establishing that he had not
16 looked at any of the land history and documents from earlier
17 in that period. That is exhibits both 25 and 26, which 25
18 is the same as 11.

19 H.O. BROWN: There is no objection on 26 now?

20 MR. VIRSIK: I thought I heard one. I will not worry
21 about that one.

22 H.O. BROWN: 27 through 39.

23 MR. VIRSIK: Leaves us with 27 through 39. Recognizing
24 the procedural posture that we went through last week with
25 respect to the exhibits of the State Board labeled as 2,

1 very briefly for the sake of clarity of the record, I am
2 going to repeat the arguments that I made or partially
3 made.

4 One, that the Notice of Hearing states that Exhibit 2
5 will be offered by the State. I understand that it does not
6 say it is accepted. It will be offered by the State. Our
7 index submitting our exhibits states, not even in a
8 footnote, but in a place where exhibits go, that we are also
9 relying on the exhibits that have been submitted to the
10 State Water Resources Control Board and for the sake --
11 therefore, I have not specifically listed such exhibits and
12 document on this list, relying on the Notice of Hearing
13 stating that they would be offered. Understanding that they
14 are not accepted but would be offered.

15 H.O. BROWN: You are talking 27 through 39?

16 MR. VIRSIK: Correct.

17 H.O. BROWN: You are withdrawing those for the time
18 being?

19 MR. VIRSIK: No, I am not withdrawing. I am
20 responding to the objection of surprise. The surprise is,
21 as I stated last week, is disingenuous because the documents
22 had been submitted May 5th and we have given notice to
23 everyone that they, in fact, had been submitted May 5th, and
24 stated that we could make copies. No one asked for them.

25 The second point, perhaps more importantly, is that the

1 Notice of Hearing states that the records that had been
2 submitted would be offered, and every party presumably had
3 the opportunity within the Notice of Hearing period to
4 review the exhibits that would be offered as a State
5 exhibit. So they could not compare a surprise of not seeing
6 or not having those exhibits. If there was any concern that
7 our protest -- any confusion that our protest would have our
8 exhibits or the protest would have no role at this hearing,
9 that was determined to not be the case when the Notice of
10 Hearing was sent out stating that State's Exhibit 2 would
11 include the files. And, again, we are not making the offer.
12 We may, depending on the ruling, may or may not make further
13 showings upon rebuttal as to Exhibits 27 through 39.

14 H.O. BROWN: Ms. Katz, you have a comment?

15 MS. KATZ: I just want to clarify one more time since
16 this has come up again that all parties, according to the
17 instructions in the Notice of Hearing, are required to
18 identify specifically what items they are proposing to
19 introduce and rely upon. And the general statement that
20 they are going to rely on exhibits and papers in our Exhibit
21 2, proposed Exhibit 2, which was withdrawn, I don't think is
22 sufficient. Now that doesn't go to whether we should admit
23 it or not. It's just a comment to clarify that is a little
24 disingenuous to say that, well, they just said they would
25 rely on all this stuff. They have to identify it

1 specifically. That is the purpose of prehearing submittal
2 requirements.

3 H.O. BROWN: Thank you, Ms. Katz.

4 Is there any further comments on --

5 I am going to admit into evidence Exhibits 2, 3, 4 and
6 5 as revised, or to be revised, by you and Mr. Donlan.

7 MR. VIRSIK: Mr. Bezerra.

8 H.O. BROWN: Bezerra. I am sorry. Of course,
9 Bezerra.

10 So if there is -- if you can't resolve that legend, let
11 me know first thing after lunch and I will reconsider
12 admitting them into evidence.

13 MR. BEZERRA: Mr. Brown, I don't think there is a
14 problem with Exhibit 5. Exhibit 5 is a text document that
15 Mr. Pyle prepared that calculation. I think it is 2 through
16 4.

17 H.O. BROWN: You had a question on 2(b) of 5 I thought.

18 MR. BEZERRA: Yes. That wasn't as to a legend. I
19 suppose we can put a legend on there. I guess I'd
20 appreciate that as well. If they're willing to do that, I
21 apologize, I didn't quite understand.

22 MR. VIRSIK: We can put a footnote, whatever it is,
23 that needs to be put on there.

24 H.O. BROWN: Ms. Lennihan.

25 MS. LENNIHAN: Mr. Brown, you may have been referring

1 to my objection to 5, which had to do with the labeling of
2 that and other exhibits with titles that were water rights,
3 related titles. And I believe that there was an offer by
4 the Salinas Valley Protestants to amend those, and which I
5 am sure we can work out.

6 H.O. BROWN: That would take care of that issue.

7 Thank you, Ms. Lennihan.

8 I will admit into evidence, if there are no further
9 objections, 2, 3, 4, 5, 13, 16, 19, 20, 22 and 26. Those
10 appear to be resolved without further comment. 13 there is
11 an objection to.

12 Did I say 13?

13 UNIDENTIFIED VOICE: Yes.

14 H.O. BROWN: Thank you. I did not mean to include 13
15 for the time being. So let me do it again. I beg your
16 pardon.

17 I will consider admitting into evidence, 2, 3, 4, 5,
18 16, 19, 20, 22, and 26, if there is no further objections.

19 Seeing none, they are so admitted into evidence.

20 Then I plan to admit Exhibits 11, 13, 17, 23, 25 and 27
21 through 39 and give them the weight of evidence.

22 And objections to that?

23 MR. O'BRIEN: I believe in particular, Mr. Brown,
24 Exhibit 23 is the Sabiston letter, which deals not only with
25 the location of the basin but also with -- there are

1 statements in there about surface water versus underflow
2 versus groundwater that I think previously you had indicated
3 are not proper subject of this proceeding. My preference
4 would be to exclude that document from the record.

5 But if the Hearing Officer were so inclined, if we
6 could admit it for the very limited purpose of whatever is
7 in there regarding the outline of the basin and not allow
8 the statements in there with respect to underflow or
9 distinctions between percolating groundwater and underflow,
10 that those would simply not be in the record of this
11 proceeding.

12 Having now spoken out loud and thought out loud,
13 probably my preference would be to keep that exhibit out.

14 As to Exhibits 27 through 39, if you read through those
15 exhibits, most, if not all, of them are essentially water
16 rights summaries and water use summaries. We have been
17 through at some length in this proceeding discussions and
18 objections relating to water rights. And you ruled
19 consistently that we are not going to get into water rights.
20 I think by letting in 27 through 39 you have opened that
21 door again. My preference would be not to do that.

22 H.O. BROWN: Thank you, Mr. O'Brien.

23 Ms. Lennihan.

24 MS. LENNIHAN: Yes, Mr. Brown. I think starting with
25 respect to 27 to 39, that is just what Mr. O'Brien just

1 talked about, that is the individualized water rights
2 materials to which we continue to object for the reasons
3 already stated.

4 Exhibit 11, which is the same as 25, the Salinas Valley
5 Protestants said, I believe, that they are not moving it
6 into evidence at this time and, therefore, it should not be
7 on your list.

8 H.O. BROWN: I beg your pardon, I think they did
9 include Exhibit 11.

10 MR. VIRSIK: We did. It was used in cross-examination
11 of Mr. Scalmanini.

12 H.O. BROWN: They are offering it.

13 MS. LENNIHAN: Well, then, I apologize if I erred. The
14 difficulty with that exhibit is that that is a 1901 map
15 which the plaintiffs, I believe, are seeking to introduce
16 again on a water rights argument. And with respect to
17 relative priorities of water rights in the basin, which is
18 not in issue in this proceeding, and, therefore, I argue
19 that it is not relevant and the foundation for it has not
20 been laid. I believe that the way it was used in Mr.
21 Scalmanini's cross-examination, and I am sure somebody will
22 correct me if I err, was to determine that he had not
23 reviewed history prior to the 1940s. That testimony came
24 out and if it stands it should suffice for Protestants'
25 purposes.

1 H.O. BROWN: Thank you, Ms. Lennihan.

2 MS. LENNIHAN: Just a few others that you did announce
3 your intent to include, Mr. Brown.

4 The letter of Sabiston, I share the concerns of the
5 Agency with respect to --

6 H.O. BROWN: Which one is this?

7 MS. LENNIHAN: The letter of Mr. Sabiston, which is a
8 former State Water Resources Control Board employee, No. 23.

9 H.O. BROWN: All right.

10 MS. LENNIHAN: The scope is overbroad. And that
11 exhibit should be excluded.

12 25 is the same as 11, and I have already articulated
13 our concerns and objections to that.

14 And 27 to 39 I addressed at the beginning, so I think
15 that covers the list.

16 Thank you, Mr. Brown.

17 H.O. BROWN: Thank you.

18 Mr. Bezerra.

19 MR. BEZERRA: Yes. Thank you, Mr. Brown.

20 As to the 27 through 39, Mr. Virsik's essential
21 argument in favor of those is that the State Board had
22 indicated it was going to offer its files so, therefore, the
23 Salinas Valley Protestants should be able to put in their
24 files as well. However, both the State Board regulations
25 and the hearing notice from this hearing state how parties

1 are to admit exhibits by reference. And in particular,
2 Title 23, Section 4 -- 64 A.3 of the California Code of
3 Regulations states that exhibits may be admitted into
4 evidence if otherwise admissible. And I don't think there
5 is any showing that these exhibits are admissible in any
6 way. There is no witness to authenticate them. There is no
7 witness to provide foundation for them. They're hearsay.
8 So I don't think they should come in under that regulation.

9 In addition, under the Board's hearing notice on Page
10 2, Subsection 49(c), it states if documents are submitted as
11 exhibits by reference, the parties offering such documents
12 shall advise the other parties with whom exhibits must be
13 exchanged the title of the documents, the particular
14 portions on which they rely, the nature of the contents, the
15 purpose for which the exhibit will be used when offered into
16 evidence and the specific file folder or other exact
17 location in SCRCB's files where the documents may be found.

18 Mr. Maloney made comment earlier about someone dumping
19 a mass of papers on someone else. That is essentially what
20 is going on here. There is a mass of paper that talks about
21 water right claims, and we haven't been pointed at any
22 particular portions as relevant or not relevant or what
23 purpose they go to.

24 I would object to their inclusion as mass. If they
25 want to bring them up in rebuttal, put on a witness to

1 testify about them, that is just fine. Then I can
2 cross-examine that witness. I can't cross-examine these
3 exhibits.

4 Thank you.

5 H.O. BROWN: Thank you, Mr. Bezerra.

6 Mr. Donlan, you rise.

7 MR. DONLAN: I don't want to belabor it. I concur
8 with and join in all the reasons stated before me. I would
9 like to reemphasize that 27 to 39, the very reason that many
10 of us are here and given the assurances that you made at the
11 outset of this hearing in your order, many of us believe
12 that this kind of stuff would not come into the record.
13 This is a backdoor attempt to do just that.

14 I would like to further point out that Exhibit 23, the
15 Sabiston letter, I am not even sure it is what they say it
16 is, as far as where it originated. It has no letterhead on
17 it. I suggest that it hasn't been properly authenticated.

18 H.O. BROWN: Thank you, Mr. Donlan.

19 MR. O'BRIEN: May I simply join in the grounds stated
20 by Mr. Donlan and Ms. Lennihan and Mr. Bezerra, please?

21 H.O. BROWN: Mr. O'Brien, yes.

22 Here is my ruling. I will admit into evidence, giving
23 the weight of evidence, Exhibits 13, 17. Then offer the
24 opportunity to respond on the Exhibits 11, 23, 25 and 27
25 through 39 before I rule on those.

1 Mr. Virsik.

2 MR. VIRSIK: Exhibit 11, which is the same as 25, Ms.
3 Lennihan's objection, and I presume that everybody else is
4 joining into it. Her objection --

5 H.O. BROWN: The 1901 map?

6 MR. VIRSIK: The 1901 map showing the northern part of
7 the Salinas Valley with sloughs or swampland or what have
8 you. The purpose of her objection, if I understood
9 correctly, is that it has a water rights color to it. That
10 is a basis on which one could assert a priority of rights,
11 for example. It may be a basis on which one could assert
12 priority of the rights. But it was used, she admits, and
13 presumably the Board can confine its reliance on the exhibit
14 as to what -- as to the history that Mr. Scalmanini did not
15 study. That is why it was offered under the circumstances,
16 and that is what it is for. It may be used creatively a
17 number of other ways. Presumably the Board will not do
18 that.

19 H.O. BROWN: Does that satisfy your concerns?

20 MS. LENNIHAN: Unfortunately, Mr. Brown, no. The
21 reason to admit an exhibit is because an adequate foundation
22 has been laid and that the exhibit is relevant. Neither has
23 occurred in this instance. In fact, what did happen was it
24 was used as a basis for cross-examination which is fine.
25 That is different than admitting it as an exhibit. Mr.

1 Scalmanini's response was that he had not gone that far back
2 in terms of history. The history of water development in
3 the northern Salinas Valley is not in issue in this
4 proceeding. You have already determined that several times,
5 and I am concerned that the Protestants are ignoring that
6 ruling.

7 What I mentioned earlier is that they did get their
8 point across in the testimony, which is to establish the
9 scope of review that Mr. Scalmanini had undertaken to which
10 testimony we have no objection. We do object to the
11 introduction of this exhibit.

12 H.O. BROWN: Does that apply to 25, also?

13 MS. LENNIHAN: I believe they are the same.

14 H.O. BROWN: Same.

15 MS. LENNIHAN: Yes.

16 MR. VIRSIK: Yes.

17 H.O. BROWN: So you see no compromise on any revision
18 or description or words in the record that you would be
19 satisfied with admitting this into evidence.

20 MS. LENNIHAN: Absolutely not. And I see no reason to
21 admit it even as to Protestants' purpose as stated.

22 H.O. BROWN: Mr. Virsik, comments?

23 MR. VIRSIK: Simply that this is not a jury trial. The
24 Board presumably knows how to look at an exhibit for a
25 limited or broad purpose or what have you. I am not sure

1 that the issue of northern water rights has come up that it
2 would be limited. I am not saying it is relevant, but I
3 don't recall that being any part of the ruling here. But
4 that it goes to Mr. Scalmanini's credibility and ability as
5 a witness testifying about the history of the Salinas
6 Valley. He was very knowledgeable about the south. He said
7 he looked at the south mostly. We looked at something
8 earlier in time at the other end of the valley. And the
9 Board can make with it what it will, give whatever weight is
10 appropriate. I am not sure how --

11 H.O. BROWN: The Board will make a determination. We
12 have enough information to make a determination on Exhibits
13 11 and 25.

14 How about 23?

15 MR. VIRSIK: The Sabiston letter.

16 MR. DONLAN: Clarification, 11 and 25 are the same
17 document?

18 H.O. BROWN: Right.

19 MR. DONLAN: You're lumping those together and you also
20 are not taking any more statements on 23?

21 H.O. BROWN: You want to take one of those numbers out,
22 Mr. Virsik, 11 or 25? It may be confusing.

23 MR. VIRSIK: Let's call it 11. It's easier.

24 H.O. BROWN: 25 is eliminated as an exhibit. There
25 will be a blank space there.

1 23, comments on 23, Mr. Virsik.

2 MR. VIRSIK: The objection I think was as to relevance
3 as to whether it -- among others as to relevance. Does it
4 really say -- what does the content really say about the
5 USGS line. Of course, it is not about the USGS line. It is
6 about the water-bearing formation, which happens, according
7 to Mr. Pyle, coincides nicely with the USGS line.

8 The other portion of the letter which may be
9 objectionable to Mr. O'Brien or others about the underflow
10 or other determinations, again much like now just Exhibit
11 11, the Board presumably knows why it is reading the letter,
12 what weight to put on the letter. I am not sure we need to
13 black line the whole thing or something like that. Maybe it
14 goes to the weight of evidence, as everyone knows Mr.
15 Sabiston is wrong. I don't know what it is.

16 H.O. BROWN: Comments.

17 MR. DONLAN: We are not as much concerned about your
18 knowledge. We know that you can look at the evidence and
19 give it the proper weight. We are concerned what would will
20 be in the record for this hearing and how it might be used
21 by other parties. I would like to state that initially.

22 This Sabiston letter, I don't even believe it
23 originated from the State Water Board. So I would like to
24 -- there is no foundation. There is no authenticity here.
25 It is completely irrelevant. If they are using it to

1 bolster another report, I believe that report can speak to
2 itself.

3 H.O. BROWN: What about 27 through 39?

4 MR. VIRSIK: 27 through 39, the objections, again the
5 surprise issue and conformance to the procedures of the
6 Board. I think I have covered that. There is nothing more
7 I can say as to that issue.

8 H.O. BROWN: It's a water rights issue on those.

9 MR. VIRSIK: Yes. The presently greater objection is
10 to the water rights component of 27 through 39. It goes to
11 the title of the Protestants' lands. And I will readily
12 admit to some degree the way the title was acquired may have
13 relevance to certain kinds of historic water rights. That
14 is the nature of the law.

15 Again, I am assuming that the Board knows why it is
16 looking at these things. It's also -- I want to emphasize
17 that the majority of those things are drawn from public
18 records.

19 H.O. BROWN: Go ahead.

20 MR. VIRSIK: Just saying that the majority of the data
21 or number of the actual exhibits are drawn from public
22 records, predominantly from the Agency. Mitigates, quote,
23 surprise to some degree. To that extent the Board found
24 that appropriate.

25 H.O. BROWN: I will rule on 11, 23 and 27 through 39

1 after the lunch break. We will meet back at 1:00.

2 (Luncheon break taken.)

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1 AFTERNOON SESSION

2 ---oOo---

3 H.O. BROWN: Come back to order.

4 Mr. O'Brien, I believe you are up for rebuttal unless
5 you made some kind of commitment that Mr. Maloney could be
6 first.

7 MR. VIRSIK: Your Honor, you asked Mr. Bezerra and I to
8 agree on the final wording on the Rosenberg legend. We have
9 done that, so can we put it on the record?

10 MR. BEZERRA: In the spirit of cooperation.

11 H.O. BROWN: Wonderful. I am encouraged.

12 MR. BEZERRA: As to Exhibits SVP-2 through SVP-4, we
13 would like the following legend to be applied to those maps.
14 I will read very slowly:

15 Cross-hatched property is not included within
16 Salinas Valley Protestants' lands and is
17 property of Rosenberg Family Ranch. See
18 judgment recorded at Reel 3515, Pages 861
19 through 972, on May 7th, 1997, in the
20 Monterey County Recorder's office.

21 (Reading.)

22 Then as to SVP-5, Subsection 2(b), it's essentially the
23 same, but it has to be different because it is not a map.

24 It would read:

25 "Protestants lands" do not include property

1 of Rosenberg Family Ranch. See judgment
2 recorded at Reel 3515, Pages 861 through 972,
3 on May 7th, 1997, in the Monterey County
4 Recorder's office. (Reading.)

5 H.O. BROWN: Any objections to those additions to
6 Exhibits 2, 3, 4 and 5?

7 Seeing none, they are so admitted into evidence.

8 MR. BEZERRA: Thank you, Mr. Brown.

9 H.O. BROWN: Still leaves us Exhibits 11, 23 and 27
10 through 39. I was going to wait to rule on those until the
11 break, but just a moment. I may rule on them right now
12 thanks to Ms. Katz.

13 Here is the ruling on Exhibit 11. Like other exhibits
14 I have admitted where the exhibit appears to be irrelevant
15 or not particularly useful, I will admit 11 into evidence.
16 The objections will go to the weight to be given to the
17 evidence.

18 Exhibit 23, there has been some testimony regarding the
19 Paso Robles formation. Therefore, I will admit Exhibit 23
20 only for the limited purpose of possible corroboration of
21 earlier testimony regarding whether the Paso Robles
22 formation is water-bearing and location of Paso Robles
23 formation. The objections will go to the weight to be given
24 to the testimony.

25 Regarding Exhibits 27 through 39, the Protestants did

1 not comply with the prehearing submittal requirements set
2 forth in the Notice of Hearing. The comment on their
3 exhibit list does not obviate the need to specifically
4 identify the documents in advance and to submit copies to
5 all parties as required in the notice. This constitutes
6 surprise and is unfair to the parties. The exhibit should
7 have been submitted with other exhibits on or before the
8 deadline set forth in the Notice of Hearing.

9 That is the ruling on the exhibits, and we move forward
10 now.

11 Mr. O'Brien, do you have rebuttal?

12 MR. O'BRIEN: Mr. Brown, I only have one very limited
13 rebuttal witness. That is Mr. Petrovic.

14 ---oOo---

15 REBUTTAL TESTIMONY OF
16 MONTEREY COUNTY WATER RESOURCES AGENCY
17 DIRECT EXAMINATION BY MR. O'BRIEN

18 MR. O'BRIEN: Good afternoon, Mr. Petrovic.

19 MR. PETROVIC: Good afternoon.

20 MR. O'BRIEN: Seems like I remember from your
21 deposition that you pronounce your name Petrovic.

22 MR. PETROVIC: Petrovic.

23 MR. O'BRIEN: I apologize. Could you please spell that
24 name for the Court Reporter?

25 MR. PETROVIC: P-e-t-r-o-v-i-c.

1 MR. O'BRIEN: Mr. Petrovic, have you taken the oath in
2 this proceeding?

3 MR. PETROVIC: Currently today, no.

4 MR. O'BRIEN: At the beginning of the proceeding?

5 MR. PETROVIC: No, I did not,

6 H.O. BROWN: I will administer you the oath.

7 (Oath administered by H.O. Brown.)

8 MR. O'BRIEN: Mr. Petrovic, what is your current
9 employment position?

10 MR. PETROVIC: I am vineyard manager at San Bernabe
11 Vineyards.

12 MR. O'BRIEN: How long have you held that position?

13 MR. PETROVIC: I have been on the property for 22
14 years, the majority of that I have held that position.

15 MR. O'BRIEN: So since approximately 1978?

16 MR. PETROVIC: Yes.

17 MR. O'BRIEN: Your family roots and your personal roots
18 go back in that area even further; is that correct?

19 MR. PETROVIC: I was born and raised in King City, yes.

20 MR. O'BRIEN: So, you are very familiar with the
21 southern Salinas Valley?

22 MR. PETROVIC: Yes.

23 MS. KATZ: Could you speak into the mike, please.

24 MR. O'BRIEN: Could you please describe your duties as
25 the vineyard manager at San Bernabe?

1 MR. PETROVIC: Yes. I take care of all -- of what we
2 consider all the cultural practices, that would be all the
3 farming practices.

4 MR. O'BRIEN: Do your duties also extend to overseeing
5 the water system?

6 MR. PETROVIC: Yes, they do.

7 MR. O'BRIEN: That includes both the irrigation and the
8 frost protection?

9 MR. PETROVIC: That is correct.

10 MR. O'BRIEN: Is it fair to say you're pretty
11 intimately involved with the day-to-day operations at San
12 Bernabe?

13 MR. PETROVIC: Yes, it is.

14 MR. O'BRIEN: Would it be fair to say you are more
15 involved in the day-to-day operations at San Bernabe, say,
16 than Mr. Merrill?

17 MR. PETROVIC: Yes.

18 MR. O'BRIEN: Would you tell me just approximately the
19 average number of frost days which you generally have at San
20 Bernabe?

21 MR. PETROVIC: I would say probably 35 nights a year
22 during the frost season; a low of ten, high of 65, so
23 average it out, about 35.

24 MR. O'BRIEN: Just so the record is clear, how would
25 you define a frost day?

1 MR. PETROVIC: A frost would be anything under 32
2 degrees during the growing season.

3 MR. O'BRIEN: The growing season would begin about
4 when?

5 MR. PETROVIC: Bud break, February to early March,
6 depending on the year, to June 1. We have historically had
7 frost June 7th.

8 MR. O'BRIEN: You're familiar with the two reservoirs
9 operated by the Monterey County Water Resources Agency?

10 MR. PETROVIC: Yes.

11 MR. O'BRIEN: Can you give my your general
12 understanding of how those reservoirs are operated?

13 MR. PETROVIC: Well, I served on a couple committees
14 regarding those reservoirs. Basically, there are
15 limitations on how much water they could hold back,
16 Department of Safety of Dams, et cetera. Basically, those
17 reservoirs are built for two things, flood control and for
18 water conservation and a third thing was also recreation.

19 MR. O'BRIEN: During the period that you have been
20 involved as the vineyard manager at San Bernabe Vineyards,
21 have you been through any droughts?

22 MR. PETROVIC: Yes.

23 MR. O'BRIEN: One major drought you were involved in
24 was approximately 1990, 1991?

25 MR. PETROVIC: It started in '87 to '91, yes.

1 MR. O'BRIEN: During that drought did you -- let me
2 strike that and ask you one foundational question.

3 The San Bernabe Vineyards we learned from Mr. Merrill
4 yesterday operates a well field of approximately 27 wells
5 along the Salinas River; is that correct?

6 MR. PETROVIC: When there is 27 in that field.

7 MR. O'BRIEN: And water pumped from those wells and
8 pumped into a conveyance system that takes water throughout
9 the vineyard; is that --

10 MR. PETROVIC: That's correct.

11 MR. O'BRIEN: During the 1990-1991 time frame, did you
12 notice that water levels in the wells along the river drop?

13 MR. PETROVIC: Yes.

14 MR. O'BRIEN: But were you still able to pump water
15 from those wells?

16 MR. PETROVIC: We were able to pump water. We were
17 about approximately half of our capacity previous to that.

18 MR. O'BRIEN: Do you recall a lawsuit that was filed
19 during that time frame by a group of homeowners up at the
20 Nacimiento Reservoir?

21 MR. PETROVIC: Very clearly.

22 MR. O'BRIEN: You had some involvement in that lawsuit?

23 MR. PETROVIC: Yes, I did.

24 MR. O'BRIEN: You filed -- well, I would like to refer
25 you to the document in the record. Mr. Virsik, it is MCWRA

1 Exhibit No. 3-17. I would like to ask a few questions about
2 that.

3 You have that document in front of you?

4 MR. PETROVIC: Yes, I do.

5 MR. O'BRIEN: First of all, does your signature appear
6 on the second page of that document?

7 MR. PETROVIC: Yes, it does.

8 MR. O'BRIEN: And the document is dated June 21, 1991,
9 correct?

10 MR. PETROVIC: That's correct.

11 MR. O'BRIEN: You signed this document under penalty of
12 perjury?

13 MR. PETROVIC: That is also correct.

14 MR. O'BRIEN: This document was submitted on behalf of
15 Monterey Country Water Resources Agency in connection with
16 this litigation we discussed a minute ago.

17 Is that your understanding?

18 MR. PETROVIC: Yes.

19 MR. O'BRIEN: In this declaration you talk about the
20 effects of the drought during this time period, correct?

21 MR. PETROVIC: That's correct.

22 MR. O'BRIEN: And in the last paragraph of the text on
23 Page 2, which is the next to the last paragraph of the
24 document, you state, "in summary our only option is the
25 scheduled releases from Nacimiento Dam."

1 Do you see that?

2 MR. PETROVIC: Yes, I do.

3 MR. O'BRIEN: Did San Bernabe Vineyards ever attempt to
4 get the Monterey County Water Resources Agency to modify its
5 release schedule during the drought?

6 MR. PETROVIC: We objected to this. And what the
7 letter concerns, the lawsuit which was actually the group
8 called Save the Dragon because that is what the Nacimiento
9 Lake looks like from the air, they were holding back water
10 basically that for us was in a time of frost protection.
11 Our wells had gone to half of their capacity, which means
12 half of the recharge. I could go into a complex, detailed
13 version of how our frost protection system works, but
14 basically what it had done to us, and Dan Merrill referred
15 to, we had done some modifications. There were four other
16 existing wells that at that time it was called the Mann
17 Ranch, which was row cropped, our lessee. We had taken
18 those wells, about a hundred thousand dollar pipeline, had
19 made those lines connect to the frost protection system or
20 the other wells. We also put a well back on line that had
21 not been used and put a pipeline through the vineyard. We
22 had to take out a vineyard which is also an economic loss.

23 MR. O'BRIEN: Excuse me, Mr. Petrovic, I may have been
24 unclear in my question.

25 My question was whether San Bernabe Vineyards ever

1 asked Monterey County Water Resources Agency to modify its
2 release schedule during the 1990-1991 drought.

3 MR. PETROVIC: We asked for the water to be released
4 that the Save the Dragon people wanted to have held, yeah.

5 MR. O'BRIEN: When you say in this declaration our only
6 openings is the scheduled releases, you're talking about the
7 schedule maintained by the Monterey County Water Resources
8 Agency?

9 MR. PETROVIC: Yes.

10 MR. O'BRIEN: You never attempted to get the Agency to
11 change its schedule of releases during the drought; is that
12 correct?

13 MR. PETROVIC: At that time, no.

14 MR. O'BRIEN: Did you ever on behalf of San Bernabe
15 Vineyards try to get the Agency to change its schedule of
16 storage in the two reservoirs?

17 MR. PETROVIC: I served on a committee looking at that
18 and looking at it in detail until I dismissed myself from
19 the committee. But for San Bernabe Vineyards, no.

20 MR. O'BRIEN: So the answer to my question is that San
21 Bernabe Vineyards never requested that Monterey County Water
22 Resources Agency change the schedule by which it stored
23 water in the two reservoirs during this drought period?

24 MR. PETROVIC: At that time, no.

25 MR. O'BRIEN: I would like to have you read from a

1 portion of your deposition, then I would like to ask you
2 some questions about this statement. It appears on Page 38,
3 beginning at Line 1 and extending to Line 7 of your
4 deposition which was taken on June 6, 2000.

5 You have that in front of you?

6 MR. PETROVIC: Yes, I do.

7 Which lines?

8 MR. O'BRIEN: Read the question and answer that starts
9 on Line 1 of Page 38 and extends to Line 7.

10 MR. VIRSIK: Just to clarify, you are not asking him to
11 read it into the record, are you?

12 MR. O'BRIEN: I would like him to read it into the
13 record so I can ask him some questions about it.

14 MR. PETROVIC: Which were the lines?

15 MR. O'BRIEN: Starting on Line 1, ending on Line 7.

16 MR. PETROVIC: Question: Mr. Petrovic, just a
17 few follow-up questions related to the
18 drought scenario. In your mind, based on
19 many years of experience in agriculture in
20 this area, would this area, the San Bernabe
21 Vineyard area, be a viable area to grow
22 grapes if you didn't have water supply
23 provided by reservoirs?

24 Answer: No. (Reading.)

25 MR. O'BRIEN: When you talked about the reservoirs in

1 that question and answer, I notice later in the page you
2 refer to Nacimiento. I assume you are talking about
3 Nacimiento and San Antonio Reservoirs?

4 MR. PETROVIC: Yes, I am.

5 MR. O'BRIEN: Thank you. Nothing further.

6 H.O. BROWN: You have no further witnesses?

7 MR. O'BRIEN: No further rebuttal witnesses.

8 MR. VIRSIK: Give me just a moment for redirect.

9 H.O. BROWN: Mr. Donlan, do you have questions of this
10 witness?

11 MR. DONLAN: No, sir.

12 H.O. BROWN: Mr. Bezerra.

13 MR. BEZERRA: I have no questions, Mr. Brown.

14 H.O. BROWN: Ms. Lennihan.

15 MS. LENNIHAN: No, thank you, Mr. Brown.

16 H.O. BROWN: Mr. Maloney.

17 MR. MALONEY: Mr. Virsik.

18 MR. VIRSIK: I am going to do redirect.

19 H.O. BROWN: Mr. Virsik.

20 ---oOo---

21 CROSS-EXAMINATION OF REBUTTAL TESTIMONY

22 BY SALINAS VALLEY PROTESTANTS

23 BY MR. VIRSIK

24 MR. VIRSIK: Mr. Petrovic, the same page of the
25 deposition, Page 38, I believe it is on -- let me be sure I

1 have the lines correct. Can you also read Lines, I think it
2 is, 16 through 18 into the record and I will ask about
3 those.

4 MR. PETROVIC: Question: Do you feel San Bernabe
5 Vineyards receives benefits in the reservoirs?

6 Answer: No. (Reading.)

7 MR. VIRSIK: I would like you to explain why it is you
8 believe that San Bernabe Vineyards does not receive benefits
9 from the reservoirs.

10 MR. PETROVIC: I think, historically speaking, the area
11 that we are in, and I speak of that because my wife's
12 family's been involved in southern county agriculture, both
13 sides of her family, since the turn of the century, that the
14 area from the dams to about Soledad never had a problem with
15 water, before the dams. It was my point in this deposition
16 that when we are in the worst dire need for water during
17 frost control, frost control is because you have no
18 schedule. You can't schedule your water. You can't deal
19 with the limited water. You have to have enough water for
20 frost protection. In that instant when the water was held
21 back because of the lawsuit from Save the Dragon, that put
22 us in severe jeopardy.

23 MR. VIRSIK: I would like to ask you a few other things
24 that are covered in that letter and Mr. O'Brien referred to
25 from 1991. There is some background in there about San

1 Bernabe.

2 Can you tell us about the -- given your experience at
3 San Bernabe, the water supply -- how would you term the
4 water supply at San Bernabe? In other words, what I am
5 asking for, is it adequate, plentiful, what are your own
6 words? How would you describe its ability to draw water for
7 its purposes?

8 MR. PETROVIC: I think one of the -- actually, when we
9 talk about marketing we talked of wineries and everyone we
10 do business with. One of the real pluses for that property
11 is the aquifer that it sits on and the quality of the water
12 we receive from it. And we are in an area that is known for
13 its frost. I don't think -- you do not develop ground
14 without doing your due diligence and see what the weather
15 conditions and water conditions are.

16 MR. VIRSIK: Can you tell us factually what you base
17 your view on that you have a good aquifer underlying San
18 Bernabe, what observations or studies you have either
19 participated in or conducted in the last 20-odd years?

20 MR. PETROVIC: Well, as anybody knows in the
21 agricultural business, you are constantly pulling out your
22 pumps and redoing your pumps because there is a maintenance,
23 there is a use, and you have to constantly put money in your
24 pumping system. If you look at that aquifer, what we sit
25 on, we are in a unique situation.

1 Geographically from about San Luis Obispo south is a
2 rock shelf and north of there, especially where our wells
3 are, is an absolutely perfect water basin. It is large
4 gravel and sand, which is high yield formation, and it is a
5 water system that charges almost immediately. If there is
6 any flow in the river at all, it charges immediately. And
7 also, you know most of our wells, if you look at agriculture
8 pumping cost, are wells that are at the deepest, they are
9 130 feet. And in a normal year our water wells, standing
10 water level from 15 to ten feet. So the cost, hydraulic
11 cost of lifting water is very cheap.

12 MR. VIRSIK: What would a two and a half foot
13 difference in your water elevation mean to you at San
14 Bernabe?

15 MR. PETROVIC: Two and a half feet, 15 and 12 and a
16 half, not much for standing water level.

17 MR. VIRSIK: That is all I have on redirect. There may
18 be rebuttal of the witness, but I will stay clear of that.

19 H.O. BROWN: You are on cross right now.

20 MR. VIRSIK: Rebuttal.

21 H.O. BROWN: You are rebuttal

22 MR. VIRSIK: Salinas Valley Protestants' rebuttal.

23 H.O. BROWN: Okay. That is fine.

24 That concludes what you have.

25 Some redirect, Mr. O'Brien.

1 REDIRECT EXAMINATION OF REBUTTAL TESTIMONY

2 BY MONTEREY COUNTY WATER RESOURCES AGENCY

3 BY MR. O'BRIEN

4 MR. O'BRIEN: I just want to understand, Mr. Petrovic,
5 whether you now change the answer you gave in your
6 deposition to my question, so I am going to ask it again.

7 In your mind, based on your many years of experience in
8 agriculture in this area, would this area, the San Bernabe
9 Vineyard area, be a viable area to grow grapes if you didn't
10 have a water supply provided by the reservoirs?

11 MR. PETROVIC: And I answered in the deposition which I
12 read later to -- you are asking did I notice a benefit from
13 it, and I said no.

14 MR. O'BRIEN: I am sorry I didn't understand that
15 answer so I am going to ask it again. Perhaps if I change
16 it somewhat.

17 H.O. BROWN: Kind of difficult hearing it, too.

18 MR. VIRSIK: If I may just tell Mr. Petrovic to try to
19 speak up. He has a cold today, and that is part of the
20 problem. His voice comes and goes.

21 MR. O'BRIEN: In your mind, based on your many years of
22 experience in agriculture in this area, would this area, the
23 San Bernabe Vineyards area, be a viable area to grow grapes
24 if you didn't have the water supply provided by the two
25 reservoirs?

1 MR. PETROVIC: To that question I answered no in the
2 deposition.

3 MR. O'BRIEN: Is that still your testimony?

4 MR. PETROVIC: Yes, that is my testimony.

5 MR. O'BRIEN: Thank you.

6 H.O. BROWN: Recross. Mr. Donlan.

7 MR. DONLAN: No, sir.

8 H.O. BROWN: Mr. Bezerra.

9 MR. BEZERRA: No, Mr. Brown.

10 H.O. BROWN: Mr. Virsik.

11 MR. VIRSIK: I have no redirect.

12 H.O. BROWN: Ms. Lennihan.

13 MS. LENNIHAN: None, thank you.

14 H.O. BROWN: Any additional exhibits?

15 MR. O'BRIEN: No, sir.

16 H.O. BROWN: Thank you, Mr. O'Brien.

17 Mr. Donlan, you are up for rebuttal.

18 MR. DONLAN: No rebuttal.

19 Thank you.

20 H.O. BROWN: Thank you, Mr. Donlan.

21 Mr. Bezerra.

22 MR. BEZERRA: I have no rebuttal evidence, Mr. Brown.

23 H.O. BROWN: Thank you, Mr. Bezerra.

24 Mr. Maloney, do you have any rebuttal?

25 MR. VIRSIK: We do. I'm going to call Mr. Petrovic

1 back up so we can get him done.

2 MR. MALONEY: Can we ask a procedural question while he
3 is coming up here?

4 H.O. BROWN: Sure.

5 MR. MALONEY: When do we put on evidence of what
6 conditions the State Water Resources Control Board should
7 adopt to protect the senior water rights holders? Our
8 evidence, your Honor, will be a lot of the discussion about
9 how the situation was dealt with in Napa, et cetera. This
10 just goes to the No. 2 question that you have in your
11 notice. And this would not be -- this is strictly brought,
12 general discussions, as to what type of conditions should be
13 imposed in this permit in our opinion, only as to protect
14 the senior water rights holders.

15 H.O. BROWN: Mr. O'Brien.

16 MR. O'BRIEN: The proper point to do that would have
17 been in the case in chief. It is an issue identified in the
18 hearing notice. There was no testimony by any of the
19 parties as to conditions that could or should be placed on
20 the water rights.

21 If Mr. Maloney wanted to address that issue, he should
22 have done it in his case in chief. It would not be proper
23 rebuttal. There is nothing to rebut on that issue.

24 H.O. BROWN: Thank you, Mr. O'Brien.

25 MR. MALONEY: The reason we did not present that -- I

1 am sorry.

2 MR. DONLAN: I would just like to join in Mr. O'Brien's
3 comments.

4 H.O. BROWN: Mr. Maloney.

5 MR. MALONEY: The reason we did not present it in our
6 case in chief, we didn't have the water availability
7 analysis. That was the concept, we would put that evidence
8 on after we got that.

9 It is our understanding that there isn't any water
10 availability analysis required. We thought that Mr.
11 Satkowski's letter of a year ago required such a report. We
12 would, of course, be putting on evidence in response to that
13 water availability analysis. We don't understand why there
14 is such secrecy about how to make the system down there and
15 such -- to me I don't understand why the case in chief or
16 rebuttal has to do with that particular issue.

17 H.O. BROWN: It is process, Mr. Maloney.

18 MR. MALONEY: I understand.

19 H.O. BROWN: We set up a process so it is fair to all
20 concerned. That is our objective here.

21 Ms. Katz, you want to say something?

22 MS. KATZ: Well, a couple of things. One, this comment
23 about the water availability analysis, it has been stated
24 many times and Mr. Brown commented on it at the outset of
25 the hearing. This hearing is the place for offering of

1 evidence as to water availability. There is no document nor
2 does there have to be a document entitled Water Availability
3 Analysis.

4 MR. MALONEY: That is not what I was personally told by
5 Mr. Satkowski.

6 MS. KATZ: Mr. Satkowski doesn't have the authority to
7 make that kind of conclusion.

8 MR. MALONEY: I understand that, but that is the way
9 -- one way of reading Mr. Satkowski's letter.

10 MS. KATZ: And just to reiterate what has been said,
11 Mr. Brown, just for the record, we do have a process and the
12 case in chief is the place to address all of the issues
13 noticed for hearing, and this seems to be late and not
14 rebutting anything.

15 H.O. BROWN: Thank you, Ms. Katz.

16 MR. MALONEY: There was no conditions even discussed in
17 the case in chief. We can't even rebut the fact there were
18 no conditions discussed in the case in chief of the
19 Agency. And if I remember Hearing Officer Brown's ruling,
20 the ruling was it is not -- the letter that we received did
21 not tell us when that would be made available even though we
22 were told by Mr. Satkowski it would be made available before
23 the hearing as a condition of preparing the application.

24 H.O. BROWN: So what is your request now?

25 MR. MALONEY: My request is that at one point -- I

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DIRECT EXAMINATION OF REBUTTAL TESTIMONY

SALINAS VALLEY PROTESTANTS

BY MR. VIRSIK

MR. VIRSIK: Mr. Petrovic, sorry about the odd order of presentation here.

You stated a few moments ago that you grew up in the Salinas Valley. How long have you been in the wine/grape industry?

MR. PETROVIC: Twenty-two years.

MR. VIRSIK: So presumably all of that has been San Bernabe or its predecessors?

MR. PETROVIC: That is correct.

MR. VIRSIK: How would you term the wine grape market presently?

MR. PETROVIC: Dana alluded to it. What has happened in Monterey County, there is a couple of things. One, historically speaking Monterey County, if you look at San Bernabe and other developments, in Monterey County in the '70s all those were contracted to or associated with large valley wineries, meaning San Joaquin Valley. Then you had acreages fluctuating 8-, 9,000 acres down. And all of a sudden then they come back up.

The whole dynamic is changing in the valley, is that not only now are we being represented, we are ourselves, the 22, 23 wineries. When you have your eggs, for lack of a

1 better term, out of one basket, economically you are much
2 more solid. You won't be taking acres out.

3 There a few other problems which affected those acres
4 at that time. One being phylloxera which is a soil pest and
5 the other nematode which is a soil pest. So the dynamic of
6 the Monterey Valley has changed completely in two ways.
7 One, we have more ports of economics to go to, more
8 wineries. Wineries are being built in Salinas Valley. And
9 also we are using resistant rootstock, which are resistant
10 to phylloxera and nematodes.

11 Not only culturally are you guaranteed you won't have
12 to pull out acres, but you also are economically guaranteed
13 you don't have to pull out acres.

14 The other thing when it came up in the meeting --
15 excuse me, earlier in the other day, was the glassy-winged
16 sharp shooter. You have to look at it two different ways.
17 When people ask me about the glassy-winged sharp shooter,
18 how do you explain it, I say, well, we have mosquitoes but
19 we don't have malaria here. The glassy-winged sharp shooter
20 is a vector that carries the Pierce's disease. We have
21 smoke tree and blue-green sharp shooters in the Salinas
22 Valley. We have had them since the beginning of time
23 probably, and we don't have Pierce's disease. Santa Cruz,
24 which is more moderate in climate, was completely wiped out.
25 Their vineyard was wiped out in the '70s and '80s from

1 Pierce's disease.

2 We think, we are not sure, because of our coldness in
3 southern Monterey County during the winter and duration of
4 cold that probably the bacterium does not live. We are not
5 sure. If that is the case, then the wine industry will come
6 racing over the hill to Monterey County. It won't be able
7 to grow it anywhere else.

8 MR. VIRSIK: Let me direct your testimony a little bit.

9 H.O. BROWN: Mr. Donlan.

10 MR. DONLAN: I don't want to be an obstructionist, the
11 purpose of rebuttal is to rebut the case in chief of the
12 applicant, and perhaps the other interested parties in
13 opposition to the Protestants. There is no evidence in the
14 Agency's case in chief about the state of the wine industry
15 in Monterey or Salinas Valley. I think this goes beyond the
16 scope of what is permissible on rebuttal evidence.

17 H.O. BROWN: Pierce's disease was brought forward by
18 the parties. I am going to allow the question.

19 MR. VIRSIK: Thank you. I am moving away from that
20 particular area. Similar but --

21 Is the -- and to alleviate the objections, I am going
22 to ask Mr. Petrovic about the competition for resources,
23 water and labor between the vineyard industry and the other
24 industries in the Salinas Valley as part of the rebuttal of
25 the Agency's cross of Mr. Merrill that his numbers may have

1 been inflated or that we should not give him -- believe him
2 that there is going to be southern expansion. That is what
3 I am going to be asking Mr. Petrovic about. So to the
4 extent their objections can be made up front.

5 H.O. BROWN: Thank you.

6 MR. VIRSIK: In any event, Mr. Petrovic, my questioning
7 -- tell me what is the competition to the vineyard industry
8 in Monterey County.

9 MR. PETROVIC: I think what the vineyard industry has
10 done is the vineyard has changed completely. Because we are
11 in an expansion mode, that we are replanting. For example,
12 at San Bernabe we have a workforce of seasonally about 440
13 people and traditionally we have had those people from
14 November, December, January, February, which would be the
15 pruning season. We then have layoffs. We only keep 120
16 people. So, about 320, 330 people are back in the general
17 population or general workforce.

18 Now with replanting we actually had our first layoff
19 two weeks ago. We had 380 people working until two weeks
20 ago, now 120. So the time frame of our labor demand has
21 lengthened. Of course, as everyone knows in California, we
22 are beginning to run out of labor. That is one of the
23 things we are competing for, is basic labor in the field.

24 MR. VIRSIK: Who are you competing with? I don't need
25 any specific names, but what industries or --

1 MR. PETROVIC: We are competing with anybody who farms
2 and uses field labor.

3 MR. VIRSIK: Is the competition for the labor direct or
4 is it -- or is there any possible symbiotic relationship? I
5 hope you understand what I am asking in symbiotic
6 relationship.

7 MR. PETROVIC: Previously and in the future there is
8 going to be a symbiotic relationship. One of the nicest
9 fits for years between the vineyard business and, let's say,
10 the row crop business, our busy time, pruning, was row crop
11 slow time, and which enabled a couple things. I gave a
12 presentation in Monterey County about this a long time ago.
13 Is that you are actually giving people who did seasonal
14 labor, you were giving them full year employment in the
15 county, which takes a lot of demands off county government.

16 MR. VIRSIK: Speaking of the county government, what
17 has your experience with the Water Resources Agency been?
18 And I don't want it to be a terribly broad question, opening
19 up all sorts of objections. What has your experience in
20 Monterey County Water Resources Agency, vis-a-vis your
21 responsibility as San Bernabe Vineyards, how has that been
22 historically?

23 H.O. BROWN: Mr. O'Brien.

24 MR. O'BRIEN: I am going to object. Mr. Donlan is
25 right, this goes well beyond rebutting anything that was

1 presented in our case in chief. It's not tied to the issues
2 in any proceeding. This is going to turn into a complaint
3 session about the Monterey County Water Resources Agency. I
4 don't think that is appropriate. If Mr. Virsik wants to
5 bring that up in some other forum, he is welcome to do so.

6 H.O. BROWN: I am not sure what you mean by "Mr. Donlan
7 is right." He is objecting to the Pierce's disease, and I
8 think I ruled on that.

9 MR. O'BRIEN: I guess my point, Mr. Brown, and I
10 apologize for not being clear, is that my understanding of
11 rebuttal is that it goes to rebut evidence presented in the
12 case in chief. You are not allowed to rebut evidence that
13 comes out at the cross-examination of the other parties'
14 witnesses. I also understand that the Hearing Officer has
15 certain latitude in that regard. I understand your ruling
16 about the Pierce's disease. I think now we are getting into
17 an area way beyond anything that was dealt with this
18 morning.

19 H.O. BROWN: I agree with the last half of your
20 objection. The first half I had issue with.

21 Mr. Donlan.

22 MR. DONLAN: I guess Mr. O'Brien raised this point
23 yesterday, and the idea or the trouble that we had is that
24 we are concerned that they would put on what amounts to be a
25 case in chief in their rebuttal case. And the purpose of

1 rebuttal is to rebut the case in chief of the other parties.

2 H.O. BROWN: We understand.

3 MR. DONLAN: I would like to state that for the record
4 again.

5 MR. VIRSIK: I am going to agree with Mr. O'Brien to an
6 extent. This has nothing to do with what occurred this
7 morning. This has to do with what occurred last week in the
8 Agency's case in chief. Specifically, they had agency
9 witnesses, Madruga and Weeks, and they made certain -- made
10 all different kinds of representations about how they
11 operate, the concerns they take into account, the reasons
12 for the releases, the reasons for their projects.

13 I am testing their veracity or credibility of those
14 Agency witnesses by offering evidence of Mr. Petrovic. And
15 we can offer proof, who will testify that he has had certain
16 difficulties with the Agency and that they have been
17 unresponsive to San Bernabe Vineyards' need, and, in fact,
18 that they have violated the San Bernabe's confidences in the
19 recent past. So it goes as to credibility of the Agency
20 witnesses, which I believe is an appropriate place for
21 rebuttal. I could not bring Mr. Petrovic as part of my
22 cross-examination of Mr. Weeks or Mr. Madruga,
23 certainly.

24 H.O. BROWN: Mr. O'Brien.

25 MR. O'BRIEN: Testimony from Mr. Weeks and Mr. Madruga

1 was to the effect that the Agency takes into account
2 downstream water supply needs in setting its reservoir
3 release policy. That is what they said. That is relevant
4 to this proceeding insofar as we are talking about how this
5 increment of water, this 27,900 acre-feet, would be released
6 in the future. It is not relevant in this proceeding to
7 have a wide range of discussion about all the bad
8 experiences Mr. Petrovic has had with the Agency over the
9 years unless he ties it into this application. That is what
10 we are here to determine.

11 MR. VIRSIK: The difficulty in tying it to this
12 application, of course, is we are at the hearing now. I
13 don't know how we could have had an experience with the
14 Agency about this application till perhaps the last couple
15 days ago. His experience, again my offer of proof, his
16 experience would be about San Bernabe's water use and water
17 systems and information that they delivered to the Agency
18 for the Agency to use presumably in its operations and its
19 ability to manage the water resources, which is what we are
20 here for.

21 H.O. BROWN: Mr. Virsik, I overruled the objection but
22 I warn you not to go much further on this issue.

23 MR. VIRSIK: Mr. Petrovic, in order to try to keep it
24 as narrow as we can so no further objections, I am going to
25 try to phrase my question or questions as narrowly as

1 possible, and I am not asking you for -- first I will tell
2 you what I am not asking for.

3 I am not asking for personal opinion about whether
4 Agency employee A or B is a good or bad person, personal
5 opinions, and I am not going to be asking you about whether
6 you think someone is lying or telling the truth on some
7 prior occasion. So I am going to try to have you confine
8 yourself to the vex actions or lack of actions as the case
9 may be of the Agency.

10 So what I am going to ask you about and I am going to
11 lead you a little bit, that is I am going to try to make the
12 question as specific so as to stay as narrow as we possibly
13 can.

14 Was there a time when San Bernabe Vineyards delivered
15 to the Agency proprietary information about its water use
16 and water systems pursuant to the Agency's request for the
17 Agency's use?

18 MR. PETROVIC: Yes.

19 MR. VIRSIK: And was, in fact, that information kept
20 confidential?

21 MR. PETROVIC: It was not.

22 MR. VIRSIK: That is all I am going to ask about this,
23 no other details about how it was released unless brought up
24 in cross or something.

25 H.O. BROWN: Change the subject.

1 MR. VIRSIK: Very well, entirely different change of
2 subject.

3 To make sure we anticipate the questions, I am going to
4 be asking you, Mr. Petrovic, about Clark Colony which gave
5 its case in chief, I think, a day or so ago.

6 Mr. Petrovic, you are a shareholder of Clark Colony
7 Water Company; is that correct?

8 MR. PETROVIC: Yes, I am.

9 MR. VIRSIK: Can you tell me how it is that you came to
10 be a shareholder of Clark Colony Water Company?

11 MR. PETROVIC: My brother and my sister and I own a
12 piece of ground in Greenfield which is serviced by the
13 Clark Colony Water.

14 MR. VIRSIK: This piece of ground, does it receive
15 water from Clark Colony Water Company?

16 MR. PETROVIC: We pay the assessment every year, but we
17 never use the water.

18 MR. VIRSIK: Are you aware of what claim of right
19 Clark Colony Water has?

20 MR. PETROVIC: Basically, yes.

21 MR. VIRSIK: What is your understanding of their water
22 rights?

23 MR. PETROVIC: They are allowed to basically extract
24 water, surface water and groundwater, from the Arroyo Seco
25 basin.

1 H.O. BROWN: Ms. Lennihan.

2 MS. LENNIHAN: This does get into the water rights
3 issue. I realize this has a different entity, but I don't
4 understand its relevance.

5 H.O. BROWN: I am having difficulty with relevance
6 here, too. Again, we are in rebuttal.

7 MR. VIRSIK: The rebuttal specifically of two
8 statements which essentially amount to the same thing. One,
9 a statement by Ms. Isakson in the case in chief of Clark
10 Colony Water Company that they have a unique claim of right
11 to surface water in the Salinas Valley, that only Clark
12 Colony Water Company and no one else.

13 Two was Mr. Melton's comment that all the water being
14 extracted in the Salinas Valley is groundwater and to his
15 knowledge only the Clark Colony Water Company extracts
16 surface water. And Mr. Maloney cross-examined Mr. Melton on
17 that basis, and the cross-examination was not allowed.

18 I am trying to rebut the statement of Ms. Isakson, in
19 which it is presumed we have heard much from Mr. Melton that
20 the Clark Colony Water Company is the only water right in
21 the Salinas Valley. That came in. I am not going to ask
22 Mr. Petrovic about names, places, anything of the sort. All
23 I want to do -- and if Clark Colony wants to stipulate that
24 they do not have the only water right of record to surface
25 water in the Salinas Valley, that is fine. Don't need any

1 more. Don't have to ask any other questions. We leave it
2 at that and nobody talks about those rights in this hearing
3 anymore.

4 H.O. BROWN: Mr. Bezerra.

5 MR. BEZERRA: I have talked to Ms. Isakson about this.
6 I don't think she said during her testimony it was only. I
7 said that during my opening statement. And I said that
8 based on representation that, I believe, National Marine
9 Fishery Service said during their policy statement. It was
10 my understanding that was the case, but I don't think it was
11 actually Clark Colony's testimony, that that was the only
12 right.

13 So I don't believe that this is proper rebuttal. Would
14 admit that we testified as to shareholders. Ms. Isakson
15 testified as to shareholders of Clark Colony. She didn't
16 make any statements about Mr. Petrovic because her testimony
17 was limited to the Salinas Valley Protestants. Mr. Petrovic
18 is not a Salinas Valley Protestant. He is not named
19 individually as one of those. So, therefore, his testimony
20 of his personal interests in Clark Colony Water Company
21 doesn't rebut any evidence.

22 H.O. BROWN: Mr. Virsik.

23 MR. VIRSIK: If Mr. Bezerra is saying that the record
24 shall reflect that no evidence was adduced that the Clark
25 Colony Water Company claims it is the only one in the

1 Salinas Valley with a surface right, that is fine. That is
2 my only purpose on this line of questioning for Mr.
3 Petrovic.

4 H.O. BROWN: So stipulate?
5 Mr. Bezerra.

6 MR. BEZERRA: I believe the testimony I think the
7 Agency gave, and Mr. O'Brien can correct me if I am wrong,
8 is that the two surface water uses in the Salinas Valley
9 were Clark Colony and the water used for the Castroville
10 Seawater Intrusion Project. That is my understanding.

11 MR. VIRSIK: I am not asking about the Agency's
12 knowledge of surface water extraction at this point. I am
13 rebutting what I had perceived to be Ms. Isakson's
14 testimony. If, in fact, that is not her testimony, there is
15 no other evidence in the record, there is merely a --

16 H.O. BROWN: I heard enough on this. I will rule.
17 Proceed.

18 MR. VIRSIK: Mr. Petrovic, getting back to the Clark
19 Colony Water Company, do you know if Clark Colony Water
20 Company is the only individual entity in the Salinas Valley
21 that is diverting based on a claim of surface water right?

22 MR. PETROVIC: I believe there's others.

23 MR. VIRSIK: I am going to leave it at that so we don't
24 get into any specifics of whom, why, where and how.

25 H.O. BROWN: Thank you.

1 MR. VIRSIK: Can I have a moment to confer with the
2 witness. I think I am done.

3 H.O. BROWN: You may.

4 MR. VIRSIK: That is all the questions I have of Mr.
5 Petrovic.

6 H.O. BROWN: Thank you, Mr. Virsik.

7 Cross-examination, Mr. O'Brien.

8 MR. O'BRIEN: No questions.

9 H.O. BROWN: Mr. Donlan.

10 MR. DONLAN: No, sir.

11 H.O. BROWN: Mr. Bezerra.

12 MR. BEZERRA: Thank you, Mr. Brown.

13 I think I only have a couple questions for Mr.
14 Petrovic.

15 ---oOo---

16 CROSS-EXAMINATION OF REBUTTAL TESTIMONY

17 OF SALINAS VALLEY PROTESTANTS

18 BY CLARK COLONY WATER COMPANY &

19 ROSENBERG FAMILY RANCH

20 BY MR. BEZERRA

21 MR. BEZERRA: I am looking at the Notice of Public
22 hearing in this hearing and it lists -- and, Mr. Virsik, do
23 you have a -- I can give it to the witness.

24 MR. VIRSIK: When you look at it, would you tell us
25 what page it is?

1 MR. BEZERRA: Sure.

2 Page 2, Footnote 1.

3 Are you personally listed among those entities that are
4 named as Protestants here?

5 MR. PETROVIC: No, I am not.

6 MR. BEZERRA: Thank you very much, Mr. Petrovic.

7 H.O. BROWN: Ms. Lennihan.

8 MS. LENNIHAN: No questions, thank you.

9 H.O. BROWN: Do you have some exhibits additionally,
10 Mr. Virsik?

11 MR. VIRSIK: Not for Mr. Petrovic, no.

12 H.O. BROWN: You have more rebuttal?

13 MR. VIRSIK: We have more rebuttal with other
14 witnesses.

15 H.O. BROWN: Call your other witness, then.

16 MR. VIRSIK: Mr. Chris Indelicato, please.

17 H.O. BROWN: Mr. Indelicato, have you taken the oath?

18 MR. INDELICATO: Yes. I have taken the oath earlier.

19 H.O. BROWN: Proceed.

20 ---oOo---

21 FURTHER DIRECT TESTIMONY OF REBUTTAL

22 BY MR. VIRSIK

23 MR. VIRSIK: Mr. Indelicato, I am going to first ask
24 you some questions about yourself so we know who you
25 are, and then I am going to ask you questions about Mr.

1 Merrill and Mr. Petrovic. If you can kind of give us a
2 postage stamp size description of who you are in relation to
3 parties that are at this proceeding.

4 MR. INDELICATO: I am one of the owners of San Bernabe
5 Vineyards. I am one of the owners of Delicato which owns
6 San Bernabe Vineyards.

7 MR. VIRSIK: So we understand your point of reference,
8 can you give us really quickly what your professional
9 education is?

10 MR. INDELICATO: I have a B.S. in accounting from USC.
11 I am a licensed certified public accountant, and I spent a
12 number of years as the CFO of the Delicato Enterprise.

13 MR. VIRSIK: What is your present position with
14 Delicato Enterprise?

15 MR. INDELICATO: I now promote and market the brands
16 around the country and then do specialized projects such as
17 these as they become available with my prior experience.

18 MR. VIRSIK: How familiar are you with the San Bernabe
19 Vineyard? In other words, the physical San Bernabe Vineyard
20 in the Monterey Valley.

21 MR. INDELICATO: Fairly familiar, I would say.

22 MR. VIRSIK: Would you agree with Mr. Merrill's
23 estimates of the size of the vineyard?

24 MR. INDELICATO: Absolutely.

25 MR. VIRSIK: Let me ask you about Mr. Merrill and Mr.

1 Petrovic, and I don't need for you to tell me specifically
2 whether they are 1099 employees or they are on the payroll.

3 Can you tell me what is their relationship to the San
4 Bernabe Enterprise?

5 MR. INDELICATO: They work for Coastal Valley
6 Management which is a vineyard management company that
7 manages our vineyard primarily and, as Mr. Merrill stated,
8 other vineyards around Monterey and California, I guess for
9 that matter. Dana reports directly to our CEO and that is
10 how the vineyard is managed through the company.

11 MR. VIRSIK: And what level of access -- let me put it
12 in two ways. I am going to ask how much access to
13 information Mr. Merrill and Mr. Petrovic have of the San
14 Bernabe Enterprise. Also going to ask what authority they
15 are clothed with. If you can answer.

16 MR. INDELICATO: They have access to all the vital
17 information necessary to run the ranch. And I think they
18 also play an important role in the business aspects of the
19 ranch in addition to just the farming aspects of the ranch.
20 They promote the ranch. They help with everything from
21 gaining financing to wine promotions and basically building
22 the long-term good will that San Bernabe has in the wine
23 industry.

24 MR. VIRSIK: Mr. Indelicato, I am going to again phrase
25 this in a way so that to the extent there are objections we

1 can get them out of the way without interruption. I am
2 going to ask you about your experience with the Agency, and
3 specifically I am going to ask you not about your personal
4 feelings about people's competence or what have you, but
5 about events and situations that occurred and I am going to
6 ask you specifically -- ask you --

7 MR. O'BRIEN: Since Mr. Virsik is graciously indicating
8 where he is going, I am going to take him up on this, make
9 my relevance objection now.

10 Unless these questions tie into this application, I
11 think they have no relevance in this proceeding.

12 MR. VIRSIK: I will make the offer of proof.

13 H.O. BROWN: I am more interested in their rebuttal,
14 the questions are in rebuttal to the direct.

15 MR. VIRSIK: We are in rebuttal. I am making an offer
16 of proof as to what it is going to rebut. Mr. Indelicato
17 will testify that in the not too distant past when he came
18 to San Bernabe Vineyards he or others in his organization
19 discovered that they had been grossly misassessed by the
20 Agency, meaning that -- I am making an offer of proof. I
21 will tie it in.

22 H.O. BROWN: I understand.

23 MR. VIRSIK: They were grossly misassessed. Part of
24 which that acres had been misclassified, meaning that on
25 their assessment role they were described as a certain type

1 of land use versus a different type of land use, irrigated
2 versus nonirrigated being the major distinction. That one
3 is charged more and one is charged less. It doesn't really
4 matter how that came out, but there was a significant
5 discrepancy. That after a number of years that discrepancy
6 got resolved. He received the money he was due.

7 What this rebuts is the integrity of the Agency's land
8 use patterns; that is, they are making their analysis out of
9 the IGS end, which from Mr. Scalmanini's -- let me back that
10 up. They are making analyses on the SVIGSM, part of which
11 data is land use, what lands are used in what kind of ways.
12 Presumably from that they assign water duties and what have
13 you. And his evidence will rebut the integrity of their
14 system as of at least two or three years ago. At least we
15 heard the testimony that the SVIGSM has been in development
16 since at least 1994 or '95. So when it started it must
17 have been relying on a very erroneous system of their land
18 classification system.

19 Now I can let Mr. O'Brien make his objections.

20 H.O. BROWN: Mr. O'Brien.

21 MR. O'BRIEN: We are involved in litigation with Mr.
22 Indelicato's firm as well as others on various assessment
23 issues. That case is set to go to trial October 23 of this
24 year. All of these issues will be -- these issues relating
25 to assessment, land classification will be dealt with fully

1 in that proceeding.

2 There is simply nothing in the record to rebut on this
3 issue. Mr. Virsik says he is trying to rebut the integrity
4 of the Agency's land use patterns. I don't think the
5 Agency's land use patterns was ever put into evidence in
6 this proceeding. It is just, frankly, a waste of time to
7 have Mr. Indelicato go through the history of his problems
8 on the assessments. That is an appropriate issue for a
9 different proceeding.

10 H.O. BROWN: Thank you, Mr. O'Brien.

11 The last word, Mr. Virsik.

12 MR. VIRSIK: I need not elicit and I would direct the
13 witness not to mention even the dollar amounts involved or
14 the names of the classifications. We are not talking about
15 the details of the lawsuit, what the separate lawsuit is
16 about. My only point is Mr. O'Brien I believe quoted me
17 correctly, is the integrity of the Agency's databases, that
18 his experience has been that it has been very, very poor
19 since he got there. And we have in the record, I hesitate
20 to again remind you of these things, but part of the
21 proceeding we are alleging prejudice because of inability to
22 see the water pumping data, for example, that there are
23 databases we do not get access to. We can't, unfortunately,
24 look at everything in its original form and show the errors.
25 We have to do it by inference, for better or for worse.

1 H.O. BROWN: You have not asked the question yet, but I
2 am leaning towards Mr. O'Brien's position on this. You can
3 ask the question, and we will see if it gets an objection,
4 and then I'll rule and have discussion.

5 MR. VIRSIK: Mr. Indelicato, I am going to ask a few
6 foundational ones which are presumably not going to be a
7 problem.

8 When did your family acquire San Bernabe Vineyards?

9 MR. INDELICATO: 1988.

10 MR. VIRSIK: Did you find out that the lands subject to
11 -- are a part of those lands assessed by the Monterey County
12 Water Resources Agency?

13 MR. INDELICATO: Yes.

14 MR. VIRSIK: Is the basis of the assessment in very
15 rough terms based on a type of land use the land is being
16 put to?

17 MR. INDELICATO: Yes.

18 MR. VIRSIK: Did there come a time within a few years
19 of your acquisition of the property that you discovered that
20 the assessments were fraught with error?

21 MR. O'BRIEN: That is the point. I restate my
22 objection.

23 H.O. BROWN: I will sustain the objection in reference
24 to the discussion we have already had on the subject.

25 MR. VIRSIK: Mr. Indelicato, what do you intend to do

1 with the water that you extracted from the lands of San
2 Bernabe?

3 MR. INDELICATO: I intend to put it to the best
4 business use that is reasonable and possible at that time.

5 MR. VIRSIK: That is all the questions I have of Mr.
6 Indelicato.

7 H.O. BROWN: Thank you, Mr. Virsik.

8 Cross-examination, Mr. O'Brien?

9 MR. O'BRIEN: No questions, Mr. Brown.

10 H.O. BROWN: Mr. Donlan.

11 MR. DONLAN: No questions, Mr. Brown.

12 H.O. BROWN: Mr. Bezerra.

13 MR. BEZERRA: No questions, Mr. Brown.

14 H.O. BROWN: That concludes the examination of this
15 witness.

16 Mr. Virsik, do you have any additional exhibits at this
17 time?

18 MR. VIRSIK: Let me confer with Mr. Maloney briefly, if
19 I may.

20 H.O. BROWN: It came to my attention that I bypassed
21 Ms. Lennihan. I offer my humble apologies.

22 MS. LENNIHAN: They are accepted.

23 H.O. BROWN: Do you have any cross-examination?

24 MS. LENNIHAN: I don't. Thank you, Mr. Brown.

25 MR. MALONEY: Your Honor, we have one witness and we

1 have a book which would avoid a second witness. And what I
2 would propose that we do, we might be able to end this
3 today, to give a copy of the book for people to look at, and
4 then all we will do is comment on the specific pages. I am
5 very nervous about copying a book in light of the
6 requirements. We will make the reference to the pages and
7 we will argue about the admissibility. If that book is not
8 satisfactory, we will bring the witness in tomorrow and
9 argue the admissibility.

10 H.O. BROWN: Let's see, what is the book, Mr. Maloney?

11 MR. MALONEY: Land Patterns in California.

12 H.O. BROWN: We will take a ten-minute break now so the
13 parties can look at that book.

14 We will off the record for a minute, Esther.

15 (Break taken.)

16 H.O. BROWN: We will come back to order.

17 You have one more rebuttal witness?

18 MR. MALONEY: I would like to start out with a book.

19 H.O. BROWN: Can we do the witness first? Make any
20 difference?

21 MR. MALONEY: I have it all figured out what I was
22 going to say with the book.

23 H.O. BROWN: Let's do the witness, get the witness out
24 of the way. Will conclude the direct, possibly. Let's do
25 it that way. Call your witness.

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DIRECT EXAMINATION OF REBUTTAL TESTIMONY

SALINAS VALLEY PROTESTANTS

BY MR. MALONEY

MR. MALONEY: Mr. Pyle. So the record is perfectly clear on this, this is rebuttal testimony presented in response to Mr. Scalmanini's testimony and to Mr. Taghavi's testimony, in particular Mr. Scalmanini's testimony concerning overdraft and Mr. Taghavi's testimony at Page 4, Paragraph 7, on the simulation of the operation of Nacimiento and San Antonio Reservoirs for downstream beneficial use purposes, including the --

H.O. BROWN: Mr. Donlan, you rise. Would you like to wait until he asked the question?

MR. DONLAN: He is free to continue.

MR. MALONEY: They get scared with Mr. Antle's lawyer right behind me.

MR. DONLAN: I will sit down.

H.O. BROWN: Let's see what the questions are.

MR. MALONEY: It is presented in rebuttal to Mr. Taghavi's testimony in Paragraphs 7, 8, 9 and 10, which were on Pages 4 and 5 of his testimony.

First question, Mr. Pyle, were you here when Mr. Scalmanini testified about the overdraft in the Salinas Valley?

MR. PYLE: Yes, sir, I was.

1 H.O. BROWN: Mr. Donlan.

2 MR. DONLAN: Mr. Scalmanini did not testify to the
3 overdraft in Salinas Valley.

4 MR. MALONEY: I believe he did testify in
5 cross-examination about the overdraft in the Salinas
6 Valley.

7 MR. DONLAN: Mr. Scalmanini testified last week.

8 MR. MALONEY: I believe you are wrong because the
9 questions were asked by Mr. Virsik after we were given the
10 right to cross-examine Mr. Scalmanini pursuant to the
11 stipulation with Mr. Donlan. That is one or two or three of
12 the questions that were asked.

13 MR. DONLAN: That is cross-examination.

14 H.O. BROWN: Was the discussion on that in direct or in
15 cross?

16 MR. MALONEY: Your Honor, can I respond to that?

17 H.O. BROWN: No. Mr. Donlan has the floor.

18 MR. DONLAN: It was in cross.

19 H.O. BROWN: Mr. O'Brien, is that the way you remember
20 it?

21 MR. O'BRIEN: My recollection, Mr. Brown, is the
22 overdraft was not an issue brought up in direct testimony.
23 I believe either Mr. Virsik or Mr. Maloney did ask him
24 directly is it your opinion that the Salinas Valley is in
25 overdraft, and he said, yes. And there was a line of

1 questioning about whether that applied only to the north
2 part of the valley or not. Mr. Scalmanini indicated in his
3 opinion it had to be applied basinwide.

4 H.O. BROWN: Mr. Maloney, what is your recall?

5 MR. MALONEY: I don't have any recall. I just have the
6 facts. The facts are that Bulletin 52 described where there
7 was overdraft. We asked Mr. Scalmanini what -- he put
8 Bulletin 52 in as evidence in his direct testimony. We then
9 asked Mr. Scalmanini about Bulletin 52 in connection with
10 the overdraft issue, we responded in his opinion there was
11 no overdraft in the Salinas Valley. Now we are having Mr.
12 Pyle respond to Mr. Scalmanini's testimony.

13 H.O. BROWN: I overrule, allow the question. Answer it
14 if you know.

15 MR. PYLE: Question again.

16 MR. MALONEY: Mr. Pyle, do you have any opinions about
17 the overdraft in the Salinas Valley?

18 MR. PYLE: Yes, I do.

19 MR. MALONEY: Could you please tell us if the entire
20 Salinas Valley is in overdraft?

21 MR. PYLE: I believe it is not. It is restricted to
22 the northern portion of the valley.

23 H.O. BROWN: Ms. Lennihan.

24 MS. LENNIHAN: I would like to object. This again goes
25 outside of the scope of this proceeding. We are not here to

1 discuss any issues that are broader issues in connection
2 with the application of the Agency. So I object based on
3 relevancy.

4 I also object because unfortunately there has been a
5 mischaracterization of Mr. Scalmanini's earlier testimony
6 which was exclusively on cross and, therefore, it is not
7 eligible for rebuttal.

8 H.O. BROWN: Mr. O'Brien.

9 MR. O'BRIEN: I would simply join in Ms. Lennihan's
10 objection and move to strike the last question and
11 answer. I think we are getting into an area here that goes
12 well beyond the scope of this proceeding.

13 H.O. BROWN: Thank you.

14 Mr. Donlan.

15 MR. DONLAN: I join in that, Mr. Brown.

16 H.O. BROWN: Mr. Maloney.

17 MR. MALONEY: Just a second please.

18 This is a general statement. I've never heard this
19 concept that you can't put in -- you can't impeach the
20 witness who has given you answers on cross-examination.
21 He's given some answers on cross-examination. We are now
22 bringing on a witness to impeach that cross-examination.
23 That is the first response to Ms. Lennihan's comment.

24 H.O. BROWN: The cross is going far beyond what Mr.
25 Scalmanini testified to. I concur with Mr. O'Brien on this

1 issue here. I am not going to take this hearing in the
2 direction of specifics as far as groundwater overdraft north
3 or south end of the basins. My ruling is the last answer to
4 be stricken, and you proceed.

5 MR. MALONEY: Thank you.

6 Now in connection with -- have you reviewed the stated
7 purpose -- based upon the stated purpose of the hearing,
8 that being the determination of whether there is
9 unappropriated water available in the Nacimiento for storage
10 in the Nacimiento Reservoir, have you performed an analysis
11 in rebuttal to the analysis of Mr. Taghavi, Mr. Pyle?

12 MR. PYLE: Yes, we performed an analysis.

13 MR. MALONEY: Now is this a copy of your analysis with
14 the conditions on it?

15 MR. PYLE: It is.

16 H.O. BROWN: Is this another exhibit?

17 MR. MALONEY: Yes, your Honor. Next in order for
18 identification.

19 H.O. BROWN: Give me a number.

20 MR. LONG: Fifty.

21 MR. MALONEY: Now, could you please explain this
22 analysis, Mr. Pyle?

23 MR. O'BRIEN: Excuse me. I just want to interpose the
24 objection that I raised a couple days ago, Mr. Brown. In my
25 mind all of this hydrologic analysis could have and should

1 have been presented in the case in chief. It goes to the
2 key issues raised in this hearing. Whether they want to
3 characterize it as rebuttal or not rebuttal, fairness would
4 have dictated that we have had an opportunity to see this
5 analysis before this hearing started so we can more properly
6 prepare our cross-examination.

7 I object on those grounds.

8 H.O. BROWN: Mr. Donlan, you join in?

9 MR. DONLAN: Yes.

10 H.O. BROWN: Ms. Lennihan.

11 MS. LENNIHAN: Yes, thank you.

12 H.O. BROWN: Mr. Maloney.

13 MR. MALONEY: We believe this issue was covered by Ms.
14 Katz's June 14th letter. It goes, as I state in the
15 beginning, to the testimony of Mr. Taghavi on Pages 4 and 5
16 of his testimony, which talks about what he did in
17 connection with the analysis of the reservoir.

18 We have a further problem. We were not even given
19 significant data until after these documents were due, which
20 we brought up earlier this morning. We have a problem with
21 the water availability analysis.

22 H.O. BROWN: Where are you going to go with this
23 exhibit, Mr. Maloney?

24 MR. MALONEY: This exhibit will go to the availability
25 of water for appropriation, and very quick cross-examination

1 on the issue.

2 H.O. BROWN: Go ahead. Ask the question and let's see
3 where it goes.

4 MR. MALONEY: Could you explain how you did this
5 analysis, Mr. Pyle?

6 MR. PYLE: This is an analysis of surface flow, which
7 is analogous to available water for storage in the
8 reservoir. The first thing we did was determine the
9 reservoir storage using inflows and release information we
10 were provided by the Agency in August of '95. I am not sure
11 that is the most current version of that data. We had been
12 waiting on a more current version of that. They were
13 working on it at the time.

14 We then prepared a percolation curve based on measured
15 data between Bradley and Soledad, using USGS gauge data as
16 well as Agency gauge flow data of the Salinas River at
17 Bradley and at Soledad.

18 We were able to prepare a curve with over a hundred
19 data points and fitted that -- fitted that data with a
20 curve, and it had a R square coefficient, which is just a
21 measure of its accuracy or the goodness of fit of the curve
22 to the data of about .9. We then reconstructed unregulated
23 flow at Bradley using the Bradley gauge and reservoir inflow
24 data provided by the Agency. We determined the monthly
25 percolation from 1977 to 1992 between Bradley and Soledad,

1 using the water balance method, which involved groundwater
2 pumping estimate, estimates of inflow and outflow from the
3 Upper Valley and Forebay and the tributaries to the Upper
4 Valley on the Forebay.

5 For groundwater pumping we used a gross value of
6 440,000 acres, acre-feet a year. That is based on a rough
7 estimate of the existing assessed irrigated acreage in the
8 basin, being about 100- to 110,000 acres in the Upper Valley
9 and Forebay. That was our demand, 440,000 acre-feet a year,
10 every year for this calculation.

11 And the results gave us the flow that bypassed the
12 Soledad gauge, that would bypass the Soledad gauge under
13 unregulated conditions. We compared that with the water
14 that was stored in the reservoirs, and the difference
15 between those two we present as the surplus flow available
16 for storage.

17 So solely based on the gauge flow at Soledad calculated
18 outside the unregulated flow at Soledad that is calculated
19 from that water balance analysis.

20 MR. MALONEY: Is it correct to conclude from column
21 three that there is no 200 -- 27,900 acre-feet of
22 unappropriated water available for storage?

23 MR. PYLE: The average at the bottom of column three
24 indicates that amount is in excess of the available water in
25 that reservoir has already been in excess by the amount of

1 the difference between the stored water and the surplus flow
2 available.

3 So, yes, it indicates there isn't 27,900 acre-feet
4 available for storage.

5 MR. MALONEY: In fact, in your opinion the Agency is
6 storing more water than is currently available at 350,000
7 acre-feet; is that correct?

8 MR. PYLE: With the storage of the reservoir at
9 350,000, yes. This analysis indicates that.

10 MR. MALONEY: Looking at columns two and three in this
11 analysis, is it correct to state that the difference between
12 columns two and three is storage of the reservoir -- is the
13 storage by the Agency of water that is now in surplus?

14 MR. PYLE: Correct.

15 MR. MALONEY: Did you analyze the types of water years,
16 dry, normal, above normal, and wet by example that has been
17 experienced in the Salinas River watershed?

18 MR. PYLE: Yes, we did.

19 MR. MALONEY: Could you describe where those conditions
20 are shown on Exhibit 40?

21 MR. PYLE: That is the far right column.

22 MR. MALONEY: Could you explain on Exhibit 40 why you
23 included the San Antonio Reservoir.

24 MR. PYLE: The San Antonio Reservoir is included
25 because of the gauge flow, the restrictions as far as being

1 able to correlate between gauge flows between Bradley and
2 Soledad.

3 MR. MALONEY: Now, would there be, in your opinion,
4 would there be water available for storage if the irrigated
5 acres, that is to say the vineyard acres or I should say
6 irrigated acreage, period, as has been testified to by Mr.
7 Merrill, were to materially increase.

8 MR. PYLE: The demand would increase, I would expect
9 the surplus flow available, that is the flow at Soledad,
10 would be decreased.

11 MR. MALONEY: Looking at the back of the Exhibit 40,
12 you should have made reference to this in an earlier
13 question.

14 Would you tell me what the technical memorandum says,
15 why it is there?

16 MR. O'BRIEN: Excuse me, Mr. Brown. Mr. Maloney keeps
17 referencing to Exhibit 40. I think it is 50.

18 MR. MALONEY: Excuse me, your Honor. I guess I wrote
19 it down as 50.

20 Thank you, Mr. O'Brien.

21 MR. PYLE: The back page of that exhibit simply
22 describes the method used to classify hydrologic years as
23 being either wet, above normal, normal, below normal and
24 dry.

25 MR. MALONEY: I have no further questions, your Honor.

1 H.O. BROWN: Thank you.

2 Cross, Mr. O'Brien?

3 MR. O'BRIEN: May I request a brief recess to confer
4 with my engineering expert?

5 H.O. BROWN: Two minutes or five?

6 MR. O'BRIEN: More like 15 would be helpful. This is
7 all new evidence. I would like to have a chance to go
8 through it with him.

9 H.O. BROWN: How about ten, ten minutes.

10 MR. MALONEY: We have a booklet.

11 (Break taken.)

12 H.O. BROWN: Mr. O'Brien, it is your turn. We are back
13 on the record and then some.

14 ---oOo---

15 CROSS-EXAMINATION OF REBUTTAL TESTIMONY

16 OF THE SALINAS VALLEY PROTESTANTS

17 BY MONTEREY COUNTY WATER RESOURCES AGENCY

18 BY MR. O'BRIEN

19 MR. O'BRIEN: Mr. Pyle, when did you prepare the
20 analysis set forth in Exhibit 50?

21 MR. PYLE: The analysis of the table on the first page
22 was done very recently, last week. And the summary on the
23 back, classifications, was done earlier, '96.

24 H.O. BROWN: You're hard to hear, Mr. Pyle.

25 MR. PYLE: I'll speak up.

1 MR. O'BRIEN: The first column in Exhibit 50, stored
2 water, does that represent actual measured storage in the
3 reservoir or are those numbers simulated?

4 MR. MALONEY: So we don't get confused on the record,
5 could I just clarify your question? Can you use the
6 numbers, the little small numbers?

7 MR. O'BRIEN: That is a fair suggestion.

8 The second column, column labeled two in 50, stored
9 water, are the numbers that appear in that column measured
10 numbers or are they simulated in some fashion?

11 MR. PYLE: They are -- they are not simulated. It's
12 the data that was given to us by the Agency. Simply we have
13 taken the difference between the inflows and releases. So
14 if inflows were greater than releases, then there is a
15 positive number in that column.

16 MR. O'BRIEN: Was that -- were those numbers calculated
17 on a monthly or annual basis?

18 MR. PYLE: Monthly basis.

19 MR. O'BRIEN: You simply accumulated those monthly
20 numbers and that is what appears in 50?

21 MR. PYLE: Correct.

22 MR. O'BRIEN: I believe you stated earlier that you are
23 assuming for purposes of this analysis total pumping in the
24 Forebay and Upper Valley areas of 440,000 acre-feet per
25 year?

1 MR. PYLE: Correct.

2 MR. O'BRIEN: Your analysis assumes that that amount of
3 water is pumped every year, correct?

4 MR. PYLE: That's right.

5 MR. O'BRIEN: So you're assuming that a farmer in the
6 Upper Valley and the Forebay area would pump the same amount
7 of groundwater whether it is a wet year with a lot of
8 moisture in the soil and a dry year with less water in the
9 soil, correct?

10 MR. PYLE: Correct. It would be -- it is a very simple
11 analysis, and it has simple assumptions we applied to it.

12 MR. O'BRIEN: Your 440,000 acre-foot number is derived
13 from first obtaining the number of irrigated acres for the
14 Upper Valley and Forebay areas, which I understand you have
15 used the figure of 110,000; is that correct?

16 MR. PYLE: Correct.

17 MR. O'BRIEN: Where did you get that number?

18 MR. PYLE: That number comes from the current irrigated
19 acreage in the Upper Valley and Forebay from assessment
20 rolls. So that is in Zone 2A. It also coincides pretty
21 well with the reported irrigated acreage in the Upper Valley
22 and Forebay by the most recent published land use.

23 MR. O'BRIEN: The most recent published land use study
24 actually has a lower number, does it not?

25 MR. PYLE: Might have a lower number, yeah. It is

1 within the range. A hundred to 110 is what I stated
2 initially.

3 MR. O'BRIEN: You have also utilized -- in getting to
4 the 440,000 acre-foot number you have also used an assumed
5 crop duty or water duty for crops in the Forebay and Upper
6 Valley area of four acre-feet per acre; is that correct?

7 MR. PYLE: No. That is gross pumping. We assumed
8 overturned flow of about 30, a third, 33 percent.

9 MR. O'BRIEN: So what is the number you have used in
10 terms of consumptive use for crops grown in the Upper Valley
11 and Forebay areas?

12 MR. PYLE: I believe that is 275,000 acre-feet.

13 MR. O'BRIEN: But in terms of the applied water number
14 that you are using, is it fair to say that you are using an
15 applied water number of four acre-feet per acre?

16 MR. PYLE: Correct.

17 MR. O'BRIEN: Is it fair to say that a large portion of
18 the lands that are under irrigation currently in the Upper
19 Valley and Forebay areas are in vineyards?

20 MR. PYLE: I couldn't say that offhand.

21 MR. O'BRIEN: You don't know?

22 MR. PYLE: We didn't take that into account.

23 MR. O'BRIEN: So, in choosing your four acre-foot per
24 acre number for applied water, you didn't take into account
25 the split between vineyard and row crop in those areas,

1 correct?

2 MR. PYLE: Right, just one water duty.

3 MR. O'BRIEN: You were here this morning for the
4 testimony of Mr. Merrill?

5 MR. PYLE: Yes.

6 MR. O'BRIEN: And you heard his testimony regarding
7 applied water for the vineyard lands which he is familiar
8 with, correct?

9 MR. PYLE: I am not sure. He spoke of an applied water
10 value?

11 MR. O'BRIEN: Yes.

12 MR. PYLE: I didn't catch that if he did.

13 MR. O'BRIEN: Do you recall him saying that he believes
14 that approximately 1.5 acre-feet per acre represents an
15 appropriate combined water, applied water number for
16 vineyards, which includes both frost protection and
17 irrigation water?

18 MR. PYLE: I don't recall that, but I have seen a
19 number and that is the number we have used in the past in
20 analyzing vineyard operations.

21 MR. MALONEY: Objection, and I'm raising this
22 objection more as a warning, as a formal objection. Be very
23 careful when you start talking about water for vineyards
24 versus water for row crops because we still have the issue
25 of conjunctive use and what happens if you are using less

1 than your water right, and clearly we are not going to talk
2 about water rights in this water rights hearing.

3 H.O. BROWN: What was the question? The question
4 related to the 1.75 acre-feet per acre, including
5 consumptive use, water applied and frost protection as it
6 relates to your answer here. What is the discrepancy?

7 MR. PYLE: We are not attempting to simulate
8 necessarily current conditions. We are attempting to
9 simulate potential future water use in the valley,
10 regardless of crop type with the discretion of the
11 landowner, I guess, as to what crop he chose to use.

12 MR. O'BRIEN: Mr. Brown, could I have the Court
13 Reporter read back the answer, please?

14 (Record read as requested.)

15 MR. O'BRIEN: So Exhibit 50 is not an attempt to
16 simulate current water conditions in the Salinas Valley; is
17 that correct?

18 MR. PYLE: Not current water usage, potential water
19 usage.

20 MR. O'BRIEN: Have you attempted in any of your various
21 analyses to analyze current water usage in the Salinas
22 Valley?

23 MR. PYLE: We did. I was on the phone with my
24 associate this morning just to verify that, and I believe we
25 did do one run, and it was back in '96, that had what was

1 estimated at the time to be current conditions.

2 MR. O'BRIEN: Have you prepared that in writing?

3 MR. PYLE: I don't have that here. And it came up with
4 different numbers, but there was always a difference between
5 stored water and surplus flow available even under current
6 conditions.

7 MR. O'BRIEN: Mr. Brown, I am going to move his late
8 statement. It was not responsive to my question. If he is
9 going to give testimony about the other analysis, which he
10 doesn't have here with him, then I am going to request we
11 request him to provide that analysis to us and I have the
12 chance to go over it. Otherwise he should be precluded from
13 giving opinions on this other analyses which are
14 nonresponsive to my question.

15 H.O. BROWN: Read the question, please.

16 (Record read as requested.)

17 MR. O'BRIEN: I think the question whether prepared in
18 writing is a yes or no question, and I don't think it opened
19 the door properly for him to give his opinions on the
20 results of that analysis. If he wants to do that, I would
21 insist on having that document provided to us before we go
22 any further.

23 H.O. BROWN: Mr. Maloney.

24 MR. MALONEY: Your Honor, we have been talking about
25 procedure for the last two weeks. They have a procedure by

1 which they can get all of Mr. Pyle's testimony, all of Mr.
2 Pyle's record in connection with this hearing. They have
3 chosen not to take advantage of that procedure. We took
4 advantage of the procedure; they have chosen not to take
5 advantage of the procedure.

6 We have a classic problem here that we have been faced
7 for the last four hearing days. They ask a question; they
8 don't like the answer. They want to get rid of the
9 question. I think the question -- I think he should be
10 asked questions about it, if he feels he has to ask
11 questions about it. They could have subpoenaed Mr. Pyle's
12 records in connection with this hearing.

13 H.O. BROWN: Mr. O'Brien.

14 MR. O'BRIEN: Mr. Brown, I think it is nothing short of
15 outrageous for Mr. Maloney to suggest that I had burden of
16 subpoenaing his witnesses' --

17 H.O. BROWN: Wait a minute, wait a minute, Mr. O'Brien,
18 please. Just on issue at hand.

19 MR. O'BRIEN: The only issue at hand is whether his
20 answer to my question was responsive or not, and whether the
21 rest of his answer should be stricken. I think the answers
22 and questions speak for themselves.

23 H.O. BROWN: Barbara, do you have any comment on the
24 answer being responsive?

25 MS. KATZ: I don't think it was responsive. This is

1 the first that staff has heard of any other study out there
2 or analysis. So, we need it, too, if he is going to be
3 testifying to it.

4 No, to answer your question, I didn't think it was
5 responsive.

6 H.O. BROWN: Strike the answer to the last question.

7 Ask your question and if you want a yes or no answer,
8 say it up front.

9 MR. O'BRIEN: Thank you.

10 Mr. Pyle, are you familiar with any published essays of
11 applied water requirements in the Upper Valley and Forebay
12 area?

13 MR. PYLE: Yes.

14 MR. O'BRIEN: Who publishes those?

15 MR. PYLE: There are various sources. The Agency has
16 done some work, among others.

17 MR. O'BRIEN: Have you -- are you familiar with the
18 most recent estimates of applied water in those two areas
19 published by the Agency?

20 MR. PYLE: Not offhand, no.

21 MR. O'BRIEN: Have you ever reviewed them?

22 MR. PYLE: I have reviewed various editions of the
23 model, and I am not ever quite clear on what the most
24 current one is.

25 MR. O'BRIEN: Do you know how the Agency estimates of

1 applied water in the Forebay and Upper Valley is compared to
2 your four acre-foot per acre number is?

3 MR. PYLE: No. You must be talking about an average
4 for all.

5 MR. O'BRIEN: Talking about a combined number,
6 correct. Do you have any idea how they compare?

7 MR. PYLE: I would say on average the Agency's numbers
8 are probably in two to two and a half foot range.

9 MR. O'BRIEN: And if you applied a number into the two
10 to two and a half foot range to your acreage number of
11 110,000 acres, what would that do to your analysis?

12 MR. PYLE: It's possible that the surplus flow
13 available for storage would increase.

14 MR. O'BRIEN: Where did you get the four acre-foot per
15 acre number?

16 MR. PYLE: It was basically an assumed number thinking
17 about some of the row crop producers in the Upper Valley,
18 whether everything went to row crop or at least they had the
19 option for doing so. Some of the numbers are higher than
20 four. Some of the Salinas lands, for instance, has records
21 showing four and a half, for instance per acre-feet.

22 MR. O'BRIEN: You said it was an assumed number based
23 on the assumption that those lands could go to row crop; is
24 that right?

25 MR. PYLE: As I mentioned, to any crop that they

1 chose.

2 MR. O'BRIEN: I thought you mentioned specifically row
3 crop in your answer?

4 MR. PYLE: In my last answer I was talking about row
5 crop as far as four acre-feet. But I previously, just a
6 little while ago, my statement in general is that that
7 assumption is based on assuming that the landowner can grow
8 any crop that they choose.

9 MR. O'BRIEN: When you say that you assume that the
10 landowner could grow any crop that they choose, what you are
11 saying is in effect that you assumed that he could choose to
12 grow a crop at a high applied water requirement.

13 Is that a fair summary?

14 MR. PYLE: That's possible. Or that acreage could
15 increase and water use and the applied water would be lower
16 per year, actual developed acreage may increase.

17 MR. O'BRIEN: You used 110,000 as your acreage number,
18 right?

19 MR. PYLE: Right.

20 MR. O'BRIEN: Where in this analysis does the
21 possibility of an increase in irrigated acres come up if you
22 use 110,000?

23 MR. PYLE: I think it is a possibility that we tried to
24 encompass in this analysis.

25 MR. O'BRIEN: Which number represents the number for

1 potential increase in irrigated acres?

2 MR. PYLE: It's -- basically the simplest way to do
3 that was to put in it water use number.

4 MR. O'BRIEN: Rather than have a specific estimate of
5 new irrigated acres, you fudged that factor into the four
6 acre-foot per acre number?

7 MR. PYLE: It could be read a lot of ways. It's a very
8 simplistic and also very flexible analysis that gives you
9 the ability to look at existing lands with higher water use
10 if that was what would happen in the future development or
11 future lands with lower water development. So there wasn't
12 any fudging. It was meant to be flexible.

13 MR. MALONEY: Your Honor --

14 MR. O'BRIEN: I can see the flexibility in the
15 analysis.

16 MR. MALONEY: Your Honor, No. 2 of the key issues, I
17 emphasize key issues, is we are talking about injuries to
18 downstream vested senior water rights. Now, we're operating
19 on the assumption -- we can't really talk about water
20 rights, but at the same time we are trying to establish a
21 water right here and we are using a four acre-foot number.
22 This is a number that has been used. I don't see why there
23 should be any questioning about how this number is
24 constructed or not. That is a senior water right. He is
25 testifying there is some people using less than five

1 acre-feet, four acre-feet and people using more than five
2 acre-feet.

3 H.O. BROWN: I disagree with you, Mr. Maloney. We are
4 talking about consumptive use and applied water. There is a
5 considerable gap between that and the record.

6 Proceed.

7 MR. MALONEY: His consumptive use number is
8 substantially lower than four.

9 MR. O'BRIEN: Are you testifying, Mr. Maloney?

10 MR. MALONEY: No.

11 H.O. BROWN: I refused to swear in the attorneys, Mr.
12 O'Brien.

13 MR. MALONEY: We flunk.

14 MR. O'BRIEN: Based on your analysis, Mr. Pyle,
15 wouldn't you expect there to have been a lowering of the
16 groundwater levels in the Forebay and Upper Valley areas as
17 a result of the Agency's storage operations?

18 MR. PYLE: A lowering of the groundwater levels as a
19 result of reservoir operations.

20 MR. O'BRIEN: As opposed to what would have been the
21 case without reservoirs.

22 MR. PYLE: I am not sure there would have been a
23 lowering of water levels with the reservoir operations.

24 MR. O'BRIEN: Looking at the bottom of columns two and
25 three of Exhibit 50, don't those two numbers, the average

1 numbers, suggest that the Agency was storing water that was
2 not surplus flow available for storage?

3 MR. PYLE: Correct.

4 MR. O'BRIEN: If the Agency was storing water that was
5 not surplus flow available for storage and the downstream
6 applied requirements remained the same, would you expect
7 over time to have seen a decrease in groundwater levels?

8 MR. PYLE: Not necessarily.

9 MR. O'BRIEN: Where would the water have gone?

10 MR. PYLE: Continued on to the ocean. Could have
11 bypassed -- could have filled the reservoir, the groundwater
12 system in the Upper Valley and Forebay. And then when that
13 water becomes available for storage, here the surplus flow
14 available for storage. If that water is released, then
15 there would be no lowering of water levels.

16 MR. O'BRIEN: It could have been going to the ocean.
17 Did you, as far as your analysis, look at the issue whether
18 that water did, in fact, go to the ocean?

19 MR. PYLE: Not at all. No. Once it gets past
20 Gonzales -- once it gets past Soledad, we didn't look at it
21 any further.

22 MR. O'BRIEN: You don't know what happened to this
23 water?

24 MR. PYLE: I don't, but I am sure during the high flow
25 years some would bypass and go to the ocean, if it were not

1 stored.

2 MR. O'BRIEN: Could I have just a minute, Mr. Brown?

3 MR. MALONEY: Are we taking a break?

4 MR. O'BRIEN: Two minutes.

5 H.O. BROWN: Off the record for two minutes.

6 (Break taken.)

7 H.O. BROWN: Back on the record.

8 MR. O'BRIEN: Mr. Pyle, in your analysis as set forth
9 in Exhibit 50, do you assume in essence that the first
10 440,000 acre-feet available in the system would go to
11 recharge regardless of demand?

12 MR. PYLE: I am not sure I understand the question.

13 MR. O'BRIEN: From a timing standpoint, as we move
14 forward into the water year, are you assuming that the four
15 acre-feet per acre represents the then current demand of the
16 downstream water uses as that water becomes available in the
17 system without an analysis specifically of the timing of the
18 needs of those downstream water users?

19 MR. PYLE: I believe we just calculated the storage
20 available. And if there was flow in the river, unregulated
21 flow in the river, then it would percolate and recharge the
22 aquifer regardless of time.

23 MR. O'BRIEN: Regardless of timing and demand, correct?

24 MR. PYLE: If the storage available in the aquifer,
25 that is not time -- that is not a timing pattern variable.

1 MR. O'BRIEN: Would that be dependent on the timing of
2 flow in the river, that recharge component?

3 MR. PYLE: Sure the recharge is timed directly to the
4 flow.

5 MR. O'BRIEN: So, essentially the first 440,000
6 acre-feet that flows down to the river for which there is
7 room in the aquifer to recharge you assume it would recharge?

8 MR. PYLE: No. Again the percolation curve determined
9 how much recharge did occur relative to the flow. And we
10 cut that off at a maximum of 50,000 acre-feet a year. So
11 following a really dry year, then it could potentially
12 accept up to a maximum of 50,000 acre-feet per month -- I am
13 sorry if I said per year. I meant per month.

14 MR. O'BRIEN: The curve that you described with the R
15 squared value, was that based on regulated flow?

16 MR. PYLE: Yes, it was.

17 If I could add a comment to that?

18 MR. O'BRIEN: Certainly.

19 MR. PYLE: I don't believe it makes any difference
20 whether regulated or unregulated. If there is flow there
21 and there is storage available in the aquifer, then this
22 calculation does not see the reservoirs, per se.

23 MR. O'BRIEN: If you were to rerun the calculation
24 based on unimpaired flow, would you expect that curve to
25 change?

1 MR. PYLE: No.

2 MR. O'BRIEN: Did you do that analysis?

3 MR. PYLE: There is no unimpaired flow data for
4 Soledad. It was -- again, the gauges were installed after
5 the reservoirs were in place.

6 MR. O'BRIEN: Is there unimpaired flow data available
7 at Bradley?

8 MR. PYLE: There is. To get percolation in the Upper
9 Valley we need two points, one upstream and one down.

10 MR. O'BRIEN: I have nothing further at this time,
11 Mr. Brown.

12 I am going to request, given the nature of the
13 presentation of this rebuttal testimony, the opportunity to
14 present some surrebuttal testimony from my witness, Dr.
15 Taghavi.

16 MR. MALONEY: Objection. It is not within the
17 procedures. We have to follow the procedures.

18 H.O. BROWN: Mr. O'Brien.

19 MR. O'BRIEN: I made this objection several times now.
20 I don't want to belabor the point. This is all testimony
21 that goes to the hearing issues and should have been
22 presented as part of their case in chief so we had full and
23 fair opportunity to review it, consult with our consultant
24 and have an opportunity to rebut it and bring our rebuttal
25 case. Because it was saved until the end of their case,

1 they are trying to preclude our opportunity to rebut the
2 testimony. We think there are serious problems with it, and
3 we would like to have the opportunity to point those out.
4 It would be a fairly brief presentation.

5 H.O. BROWN: Off the record.

6 (Discussion held off the record.)

7 H.O. BROWN: Mr. O'Brien, what kind of time do you need
8 for surrebuttal?

9 MR. O'BRIEN: Ten minutes.

10 MR. MALONEY: May we speak to this?

11 H.O. BROWN: What are the issues that were brought up
12 here in rebuttal that should have been brought up in direct
13 that you are concerned with?

14 MR. O'BRIEN: I think there are some fairly fundamental
15 issues regarding the validity of this analysis. I have been
16 attempting to go into some of those on cross-examination,
17 but I think it would be only fair to have Dr. Taghavi give a
18 brief critique of Mr. Pyle's analysis.

19 H.O. BROWN: What is it specifically in the analysis
20 that needs to be cleared up?

21 MR. O'BRIEN: I think specifically Mr. Pyle's
22 assumptions regarding the application of applied water
23 requirements and this last issue regarding the regulated
24 versus unregulated flow. Dr. Taghavi had some comments on
25 that issue.

1 H.O. BROWN: If I allow you surrebuttal, that will
2 necessitate a cross?

3 MR. O'BRIEN: I believe it would.

4 MR. MALONEY: And a surrebuttal. The problems we are
5 heading with this, we offered to put this on yesterday, and
6 the other side did not want us to have it yesterday.

7 H.O. BROWN: Yesterday wasn't the time. During the
8 direct was the time.

9 MR. O'BRIEN: I believe it would be in the discretion
10 of the hearing officer whether response to Dr. Taghavi,
11 whether they would entitle them to put a response on to him.

12 H.O. BROWN: You need ten minutes to verify up that --

13 MR. O'BRIEN: Probably less than ten minutes.

14 H.O. BROWN: And to deal specifically with the
15 application rate and consumptive use requirements?

16 H.O. BROWN: I believe those are the two main issues we
17 would want to address. I would probably simply ask Dr.
18 Taghavi to present any comments of criticisms regarding Mr.
19 Pyle's analysis.

20 MR. LONG: I will allow you five minutes for
21 surrebuttal in that issue for the reason stated. And then I
22 will allow your team five minutes in cross, if you need it.

23 MR. MALONEY: And we have the opportunity to have Mr.
24 Pyle respond to his questions. You said cross.

25 H.O. BROWN: Cross.

1 MR. MALONEY: In other words, we can't bring Mr. Pyle
2 back after Mr. Taghavi testifies?

3 H.O. BROWN: Not now. I may change my mind on that,
4 but not now. Otherwise, it has to have an end somewhere.

5 MR. MALONEY: We agree. We thought the end was right
6 now.

7 MR. O'BRIEN: Mr. Brown, I appreciate that. Before we
8 do this with Dr. Taghavi, I think Mr. Donlan did have some
9 limited cross-examination as well.

10 H.O. BROWN: We will go through the list here. I am
11 not going to miss Ms. Lennihan this time.

12 Mr. Donlan, you are next.

13 ---oOo---

14 CROSS-EXAMINATION OF REBUTTAL TESTIMONY

15 OF THE SALINAS VALLEY PROTESTANTS

16 BY TANIMURA & ANTLE

17 BY MR. DONLAN

18 MR. DONLAN: I am going to ask you, Mr. Pyle, if you
19 could just walk me through this real slowly. Again, in
20 fact, it would be really beneficial if you can kind of draw
21 a schematic for us. I wish we had a poster board, but we
22 don't have a poster Board. Can I ask you to draw a
23 schematic that we might use in evaluating what you have done
24 here.

25 H.O. BROWN: Go give him the paper and ask him and

1 we'll rule on that. What do you want him to draw?

2 MR. DONLAN: I am not a hydrologist, so this is
3 difficult for me.

4 Table -- column two, labeled stored water, is based on
5 a calculation of inflow minus release?

6 MR. PYLE: That's right. It does not account for
7 evaporation which would tend to decrease surplus flow
8 available for storage.

9 MR. DONLAN: So, hypothetically, the beginning of a wet
10 year does this assume there is carryover storage?

11 MR. PYLE: I don't believe so.

12 MR. DONLAN: You start with an empty reservoir for
13 purposes of your analysis?

14 MR. PYLE: I believe so. I would have to check that.

15 MR. DONLAN: So, hypothetically, it begins to
16 precipitate in November, December, whenever it might, and
17 that reservoir begins to fill. And this calculation, the
18 stored water column is based on 377,000 acre-feet of storage?

19 MR. PYLE: It doesn't deal with storage at all. It is
20 inflows and releases. So really whether it is a full
21 reservoir or not is not material to this calculation.
22 Strictly inflows and releases.

23 MR. DONLAN: In 1960 it says 60,000. I assume that is
24 acre-feet. What does that number stand for?

25 MR. PYLE: That is the amount of -- the difference

1 between inflows and releases.

2 MR. DONLAN: Can we assume that that is stored?

3 MR. PYLE: Yeah.

4 MR. DONLAN: Then moving over to -- after that, your
5 analysis takes 440,000 acre-feet out or does this --

6 MR. PYLE: No. Just takes monthly inflows and releases
7 every year, and from those releases calculates the flows at
8 Bradley. And once we have the flows at Bradley, we have --
9 take the percolation curve.

10 MR. DONLAN: The real flows at Bradley or simulated
11 flow, based on an average over the course of the month?

12 MR. PYLE: This is an attempt to estimate unregulated
13 flow, so it is the release plus whatever gauge flow at
14 Bradley was occurring without the releases.

15 MR. DONLAN: Then based on that calculation you assumed
16 that if there is groundwater storage capacity available you
17 can still store in the groundwater basin up to 50,000
18 acre-feet a month?

19 MR. PYLE: Correct. That is the percolation curve.
20 Looks very good for making that calculation.

21 MR. DONLAN: So the water for all intents and purposes
22 is stored in the groundwater basin up to 50,000 acre-feet a
23 month until you get to 440?

24 MR. PYLE: 440. No. Calculate the flow at Bradley
25 based on how much percolates and that is calculated monthly.

1 So the 440 is an annual number. And there were other
2 inflows and outflows to balance that as well.

3 MR. DONLAN: From other than reservoir storage?

4 MR. PYLE: Right, the tributary inflows as I mentioned
5 before and also subsurface inflows and outflows were
6 accounted for. A very small number compared to the flows of
7 the river, but it would make the calculation completed so we
8 included those as well.

9 MR. DONLAN: Is it uncommon for there to be a
10 wintertime flow of 10,000 cfs in the Salinas River?

11 MR. PYLE: Uncommon.

12 MR. DONLAN: In an average wet year, or an average wet
13 year, I am sorry, a flow of 10,000 cfs during that heavy
14 precipitation, is that uncommon?

15 MR. PYLE: I don't know the number so well in cfs.

16 MR. DONLAN: What I am trying to get at is, assume
17 there is a flow, if there is a flow of 10,000 cfs in the
18 system at a given time.

19 MR. MALONEY: Could you -- excuse me, could you put
20 that in acre-feet?

21 MR. DONLAN: No, I can't.

22 MR. MALONEY: You can't?

23 MR. DONLAN: No.

24 Is it safe to assume this analysis is based on flow
25 rate, it is just kind of volumetric accumulation?

1 MR. PYLE: I can tell you how I distribute, mostly
2 averages in acre-feet.

3 MR. DONLAN: Can you base the flow, you figure out what
4 the conversion of what that would be to acre-feet and the
5 water goes where you have assigned it?

6 MR. PYLE: Well, the numbers that we receive from the
7 Agency were in acre-feet. And those were monthly and that
8 dictated how we handled it in terms of the time frame,
9 because I think the measured data is a little bit more
10 frequent than that, but it is the Agency's monthly inflows
11 and releases that limited the time frame.

12 MR. DONLAN: Have you read the hearing notice? That
13 was asked of you earlier today.

14 MR. PYLE: Yes, I have.

15 MR. DONLAN: You read what hearing issue No. 2 says?

16 MR. PYLE: I generally looked at it.

17 MR. DONLAN: I will read the beginning. Has, past
18 tense, the additional diversion to storage which would be
19 authorized by the approval of Application 30532 caused
20 injury to persons with senior water rights downstream of
21 Nacimiento Reservoir?

22 MR. MALONEY: Objection. He isn't reading the full
23 hearing notice. That is only the key issue to be considered
24 at the hearing.

25 MR. DONLAN: That's --

1 H.O. BROWN: Response, Mr. Donlan.

2 MR. MALONEY: Why don't you read the full hearing
3 notice. Is only the key issues to be considered at the
4 hearing, not all the issues.

5 MR. DONLAN: I believe he answered the question. I can
6 go get the full hearing notice.

7 H.O. BROWN: Withdraw the question. You have a
8 choice.

9 MR. DONLAN: I will withdraw my paraphrasing of the --
10 are you familiar with Key Hearing Issue No. 2?

11 MR. PYLE: Yes.

12 MR. DONLAN: Thank you.

13 Does your average analysis address the question of
14 whether there has been an impact to groundwater levels in
15 the Upper Valley and Forebay?

16 MR. PYLE: Only indirectly.

17 MR. DONLAN: How do we deduce impact to groundwater
18 from what you have done here?

19 MR. PYLE: Well, in conjunction with the testimony of
20 Mr. Merrill, that was one of the reasons for showing
21 hydrologic conditions, and under those dry years in which
22 they, the dry year in particular in which they suffered,
23 this analysis does show that surplus flow wasn't available
24 for storage. Some of that flow was not available for
25 storage and should have been released. That could have

1 alleviated that problem.

2 But primarily this exhibit is to address Key Issue No.
3 1.

4 MR. DONLAN: Do you know what the storage capacity was
5 -- the storage level was in 1990?

6 MR. PYLE: Not offhand, no. This is strictly based on
7 inflows and releases.

8 MR. DONLAN: If I told you that it wasn't 300,000
9 acre-feet in storage in 1990, would that surprise you.

10 MR. PYLE: No.

11 MR. DONLAN: Are you familiar with the drought from '87
12 to '92?

13 MR. PYLE: Right. If there were inflows, there would
14 be releases.

15 MR. DONLAN: I understand that.

16 Does your testimony here, though, for example the '90
17 period you have addressed, deal with the upper incremental
18 amount of water being applied for in this application? They
19 already have a license to store 350,000 acre-feet.

20 MR. PYLE: It addresses it in regards to this surplus
21 flow available from storage. And the average indicates that
22 27-9 is not available.

23 MR. MALONEY: Your Honor. We would like to see if we
24 have to finish this today. It is almost 4:00.

25 H.O. BROWN: Can we speed this up some, both sides.

1 MR. DONLAN: Mr. Brown, I would like to reiterate Mr.
2 O'Brien's comment. This was dropped on us at the very last
3 minute, and apparently it is based on some complicated
4 assumptions. We are just trying to figure out what was done
5 here. That is fair. They are holding this out as addressing
6 a hearing issue which should have been included in their
7 case in chief. I think we are entitled to find out what
8 they have done.

9 H.O. BROWN: We addressed that issue, and I am going to
10 allow you five minutes with the expert witness to have
11 surrebuttal on this.

12 Are there any other issues?

13 MR. DONLAN: I would like to reserve five minutes for
14 my witness as well.

15 H.O. BROWN: All right, Mr. Donlan? You can have five
16 minutes for surrebuttal and you get another five minutes to
17 cross.

18 MR. DONLAN: I will stop my cross now.

19 MR. MALONEY: Your Honor, one other request. Can I
20 have a slight break after Mr. Taghavi and Mr. Scalmanini put
21 on their testimony to talk to my expert? I am just a
22 lawyer. This is all beyond me.

23 H.O. BROWN: That is very noble.

24 Let's do the surrebuttal right now on this issue while
25 we he's at hand, and you can pull your witness, Mr. O'Brien.

1 MR. O'BRIEN: Mr. Brown, Dr. Taghavi and Mr.
2 Scalmanini have conferred very briefly here. I think it
3 would make it go most efficiently if Mr. Scalmanini went
4 first and then Dr. Taghavi.

5 H.O. BROWN: Okay. Mr. Scalmanini or Mr. Donlan,
6 proceed.

7 ---oOo---

8 DIRECT EXAMINATION OF SURREBUTTAL EVIDENCE OF
9 TANIMURA & ANTLE
10 BY MR. DONLAN

11 MR. DONLAN: Mr. Scalmanini, will you please explain how
12 this analysis depicts harm from Application 30532.

13 MR. SCALMANINI: I will try. My impression of the
14 analysis is that it concludes that the Agency has stored
15 water in excess of so-called surplus flow available to be
16 stored, which implies that there has been interception of
17 water that would otherwise satisfy these downstream water
18 requirements rights, whatever words are going to be used to
19 describe them.

20 There are two scenarios that can result from that. One
21 is that the water was held back from them and, therefore,
22 they didn't have it. If that is the case, since they pump
23 from an aquifer system, then the aquifer system had to have
24 been impacted, which would be shown by some change in
25 groundwater levels or groundwater storage.

1 MR. MALONEY: Can we wait just a second so Mr. Pyle can
2 finish writing?

3 MR. O'BRIEN: Could you please give us your comments
4 and criticisms with respect to Exhibit 50 and the analysis
5 embodied therein?

6 DR. TAGHAVI: Yes, of course. I have had a very brief
7 period to review this, so my comments are based on the very
8 brief observations that I have had. I would just itemize
9 these comments.

10 My first comment would be based on the issue of the
11 unit pumping rate, unit water pump, and the four acre-foot
12 per acre that has been assumed in this analysis year round,
13 four acre-foot of water per acre per year. And the
14 inconsistency between this assumption and what has been
15 published at least by the Agency through their observations
16 and the records that they have been collecting. Between
17 1995 and '98 the records have been published.

18 MR. MALONEY: Objection, your Honor. I would like to
19 review the objection that we made originally in a motion to
20 obtain the records from the Agency in connection with their
21 extraction reports. The data on which he is relying is the
22 result of extraction reports that we have not been given the
23 right to cross-examine on based on the Steiny case. I am
24 renewing that. We brought that up yesterday morning and the
25 claim was made that we have waived it because we didn't

1 bring it up again at this hearing.

2 We do not believe we waived it, but I am objecting to
3 this whole reliance on anything that was based on extraction
4 reports of the Agency.

5 H.O. BROWN: Mr. O'Brien.

6 MR. O'BRIEN: The data that Dr. Taghavi is referring to
7 is published data that is available to Mr. Maloney and his
8 experts. We are not going into any data that the Agency is
9 keeping secret from the public.

10 H.O. BROWN: Who published the data?

11 MR. O'BRIEN: I think the Agency.

12 DR. TAGHAVI: The Agency in its annual reports of water
13 extraction between '95 and '98, I believe was the last one
14 that was published.

15 H.O. BROWN: Where are you headed with this, Mr.
16 O'Brien? I am trying to follow this back and forth. The
17 consumptive use of crops in the Salinas Valley aren't that
18 well-known, and there is different agencies and entities
19 that may agree or disagree or believe this is not new
20 science.

21 MR. O'BRIEN: I agree a hundred percent, Mr. Brown. We
22 have been presented with an analysis that is based on an
23 assumed applied water number of four acre-feet per acre
24 which we think is way out of line with all the different
25 studies and estimates that are out there.

1 I think I am entitled to make a record here that that
2 number that Mr. Pyle is using is inconsistent with what's
3 been published by different government agencies. That is
4 the only point I am trying to make.

5 H.O. BROWN: You are on record with that. I am asking
6 the question of the hour: How much more do you need?

7 MR. O'BRIEN: I don't need to be on the record much
8 more at all, Mr. Brown. I appreciate your indulgence. We
9 will move this along quickly.

10 H.O. BROWN: Okay.

11 The objection is overruled.

12 MR. MALONEY: Your Honor, can I make one more point for
13 the record?

14 H.O. BROWN: On my ruling?

15 MR. MALONEY: I didn't have the last chance to make
16 comment. I will sit down.

17 H.O. BROWN: Proceed.

18 DR. TAGHAVI: The second issue I see in this
19 calculation is that the percolation rates and percolation
20 curve that is being developed is based on regulated flow
21 between two gauges at Bradley and Soledad. And typically,
22 if you are looking at unregulated flow, you would see a lot
23 more rainfall and runoff during wintertime. And so
24 definitely you would see so-called flatter curve which would
25 have lesser slope under unregulated conditions. So that

1 would tend to -- what the curve which is used in this case
2 here tends to overestimate what the percolation rate is,
3 which would basically overestimate what the surplus flow
4 available would be.

5 The third comment that I would have is in terms of the
6 actual resolution of the calculations. As I testified in my
7 direct testimony, the Salinas Valley and the whole watershed
8 is a rainfall watershed. And based on the rainfall runoff
9 conditions, you would tend to have a lot of flashy flood and
10 flashy stream flows throughout the wintertime and early
11 springtime. And so, most of the time, at least the Agency
12 and most of the analysis that the Agency performs we try to
13 do that, I as a consultant at least, try to do it on a
14 daily basis because of the rainfall watershed as opposed to
15 a snowmelt watershed.

16 So a monthly calculation of such a surplus flow
17 available, I would think, would also overestimate based on
18 monthly average numbers.

19 That is all I have to say.

20 Thank you.

21 H.O. BROWN: Thank you, Doctor.

22 MR. MALONEY: Could I have an opportunity to consult
23 with my expert?

24 H.O. BROWN: How much time would you like?

25 MR. MALONEY: Probably between five and seven

1 minutes.

2 H.O. BROWN: Five minutes.

3 (Break taken.)

4 H.O. BROWN: We are back on the record.

5 Mr. Maloney, your turn.

6 ---oOo---

7 CROSS-EXAMINATION OF SURREBUTTAL EVIDENCE OF

8 MONTEREY COUNTY WATER RESOURCES AGENCY &

9 TANIMURA & ANTLE

10 BY SALINAS VALLEY PROTESTANTS

11 BY MR. MALONEY

12 MR. MALONEY: We are grossly prejudiced. We are not
13 following the original rules set at the beginning of the
14 hearing.

15 Just a couple quick questions and maybe I will give
16 this to Mr. Taghavi to figure out whether we are incorrect
17 or not. This is hearing Exhibit 6 that we would like to put
18 back into the record. Hearing Exhibit 6 is a document
19 prepared from the records of the Agency, the limited records
20 that we were able to get pursuant to our subpoena of the
21 documents of the records, and we have taken those records
22 and tried to apply them to the Upper Valley exclusively.
23 What I am directing your attention to is it is our belief
24 there is approximately 40,000 acres of productive land in
25 the Upper Valley.

1 And based on our analysis -- this could be wrong. We
2 specifically asked that they tell us what township and range
3 were in the Upper Valley.

4 H.O. BROWN: Mr. Maloney. You have ten minutes to
5 cross these expert witnesses, or you can use it as you are
6 doing or go ahead and cross.

7 MR. MALONEY: I understand. We are showing 178,000
8 acre-feet of water pumped in 1997 reporting year, which
9 according to our calculations would come out in excess of
10 four acre-feet per acre. This is in dispute with you.

11 Do you have any -- isn't that correct, Mr. Taghavi?

12 DR. TAGHAVI: May I have a minute to look at this?

13 MR. MALONEY: Here is the township. If you would like
14 to look at them, Mr. Taghavi, go to Plaintiff's Exhibit 1.
15 Maybe that will help you identify the Upper Valley.

16 DR. TAGHAVI: Would you repeat the question, please?

17 MR. MALONEY: We are showing 178,000 acre-feet pumped
18 in what we perceive to be the ground pumping by township for
19 Zone 2A in the approximate area of the Upper Valley. It is
20 our understanding there is approximately 40,000 acres of
21 irrigated land, give or take a thousand acres or two in the
22 Upper Valley.

23 Do you have any reason to believe that that information
24 is incorrect?

25 DR. TAGHAVI: No. I do not have the information on the

1 acreage right now, unless you point me to the actual acreage
2 that would go along with this pumping report in here.

3 MR. MALONEY: Do you not know as we sit here today the
4 approximate acreage of irrigated lands in the Upper Valley
5 in 1997?

6 DR. TAGHAVI: I do not know the exact amount, no. But
7 approximately 40,000 for round numbers is about right.

8 MR. MALONEY: Thank you.

9 Now, you are --

10 DR. TAGHAVI: Mr. Maloney, I have not examined the
11 township ranges.

12 MR. MALONEY: I am asking you to go over to the board
13 and examine them, see what plaintiff's exhibit was.

14 MR. O'BRIEN: That will probably use up your whole ten
15 minutes.

16 MR. MALONEY: He can examine while I am examining Mr.
17 Scalmanini questions. We asked that these townships be
18 identified by the Agency in an order before this Board, and
19 it was refused.

20 H.O. BROWN: Mr. Maloney, sir. Examine him.

21 MR. MALONEY: I am examining Mr. Scalmanini.

22 Now, Mr. Scalmanini, let's go take a quick look.

23 Excuse me, am I pronouncing your name right?

24 MR. SCALMANINI: No.

25 MR. MALONEY: Scallamini?

1 MR. SCALMANINI: No.

2 MR. DONLAN: Scalmanini.

3 MR. MALONEY: Mr. Scalmanini, when you did your
4 hydrographs -- let's look at Key Issues 1 and 2 in the
5 hearing notice. These are the key issues. These are not
6 all the issues but the key issues. No. 2, you did not take
7 into account senior vested water rights in your hydrographs,
8 did you?

9 MR. SCALMANINI: Basically, I neither took them into
10 account nor ignored. Hydrographs are plots of water levels.

11 MR. MALONEY: Objection. Nonresponsive.

12 H.O. BROWN: Give a yes or no answer.

13 MR. SCALMANINI: I don't know how to do that, sir.
14 I plotted hydrographs for 30 years and I've never taken
15 into account water rights. They are simple plots of
16 measured water levels in wells.

17 H.O. BROWN: Is that a no?

18 MR. SCALMANINI: I guess that is a no, no.

19 MR. MALONEY: The answer, I guess, is no.

20 H.O. BROWN: Yes.

21 MR. SCALMANINI: That is what I just said.

22 H.O. BROWN: Yes, it is no.

23 MR. MALONEY: Now, in those hydrographs you did any
24 determination as to whether or not there was harm in the
25 Upper Valley after senior vested water rights were taken

1 into account, did you, yes or no?

2 MR. SCALMANINI: I could interpret the hydrographs.

3 MR. MALONEY: Yes or no?

4 MR. SCALMANINI: Yes. I could make that
5 determination.

6 MR. MALONEY: But you said you didn't take into account
7 senior vested water rights?

8 MR. SCALMANINI: In preparing the hydrographs, that is
9 correct, I did not. But the rest of the answer is that.
10 Yes, I did. I was able to interpret the hydrographs to show
11 a lack of harm to so-called, what did you call them, senior
12 vested water rights.

13 MR. MALONEY: Wait a second. Let's just get the right
14 words. Let me find them. They call them --

15 MR. SCALMANINI: Persons with senior water rights
16 downstream of --

17 MR. MALONEY: Protect senior water right holders, the
18 senior water right holders. Then they speak in terms of
19 senior water rights downstream.

20 MR. SCALMANINI: Which one do you want me to respond to?

21 MR. MALONEY: Well, the first one.

22 Did you take into account when you were determining
23 harm the nature and extent of the senior water rights
24 downstream of the Nacimiento Reservoir?

25 MR. SCALMANINI: I took into account the correlative

1 water rights of pumpers from the --

2 MR. MALONEY: What does correlative have to do with
3 senior vested --

4 MR. DONLAN: Object.

5 H.O. BROWN: Hold it a minute. Everybody settle down.
6 Take a deep breath. And I am going to give you an extra
7 couple of minutes here, and you can make sure you get your
8 questions in on time. We have been interrupting you, and
9 you can have an extra two minutes in the time, Mr. Maloney.
10 I am going to ask you to speak one at a time.

11 Is there an objection on the floor?

12 MR. DONLAN: I'm objecting to the question. He is
13 calling for a legal conclusion. We have been through this a
14 number of times. I think Mr. Scalmanini is attempting to
15 answer his question, but I think Mr. Maloney is attempting
16 to back him into a box, and I don't think that is fair.

17 H.O. BROWN: Ms. Maloney is trying to hurry his
18 questions because he has a limited time.

19 Try to respond as quickly as you can.

20 Ask the question again. Time starts now again.

21 MR. MALONEY: Did you take into account when you
22 prepared the hydrographs any harm to senior water rights
23 downstream of Nacimiento? And I only want -- and I will now
24 show you what the water rights of the senior water rights
25 are downstream if you don't know what they are.

1 H.O. BROWN: You want a yes or no answer?

2 MR. MALONEY: Yes.

3 MR. SCALMANINI: Go ahead and show me what the senior
4 water rights are downstream.

5 MR. MALONEY: Best estimate is shown on potential water
6 use, the drainage basin boundaries, subject to modification
7 by our research of the titles called the potential water use
8 area.

9 Did you take into account all the water rights that an
10 area might have when you prepared the hydrographs, yes or
11 no?

12 MR. SCALMANINI: I lost that question.

13 MR. MALONEY: Please answer that particular
14 question.

15 MR. SCALMANINI: In preparing hydrographs I did not
16 take into account water rights. They are simple plots of
17 water levels versus time.

18 MR. MALONEY: You did not take into account any harm to
19 those when you prepared hydrographs, too; is that correct?

20 MR. SCALMANINI: I interpreted the hydrographs
21 regarding harm. I did not take into account harm in
22 preparing the hydrographs.

23 MR. MALONEY: Thank you.

24 Mr. Taghavi, could you -- this data we tried to get out
25 of the Agency in our motion for data -- tell me exactly how

1 many acres, according to your best estimate, were pumped
2 based on the data that was supplied to the Agency during the
3 year 19- -- excuse me, supplied by Agency to us during 1997
4 in the Upper Valley?

5 H.O. BROWN: You mean acre-feet?

6 MR. MALONEY: In acre-feet.

7 DR. TAGHAVI: Based on the examination of exhibit --

8 MR. VIRSIK: That is Salinas Valley Protestants'
9 Exhibit 6.

10 DR. TAGHAVI: Based on the Exhibit 6 of the Salinas
11 Valley Protestants and examination of the map, the
12 approximately 178,000 acre-feet has been reported as pumped
13 water during that period, 1997.

14 MR. MALONEY: There is approximately, according to your
15 testimony, 40,000 acre-feet of irrigated land?

16 DR. TAGHAVI: Well, in fact, I checked my records and
17 there is approximately 47,000 acres of irrigated land.

18 MR. MALONEY: That is fine.

19 In asking this question, your Honor, I am in no way
20 waiving our Steiny objection to this data that we have to
21 rely on in these proceedings.

22 Just let me consult with my colleagues.

23 I am not quite sure how to offer this testimony, offer
24 this cross-examination. My expert or I should say
25 Protestants' expert is in disagreement with the percolation

1 analysis that Mr. Taghavi offered. He does not believe that
2 there will be that much conflict in the percolation
3 analysis. I think I might want to ask my expert the
4 ultimate why question on that.

5 H.O. BROWN: One question to ask him?

6 MR. MALONEY: One question, your Honor.

7 H.O. BROWN: Ask the question and I will see if I'll
8 permit it.

9 ---oOo---

10 DIRECT EXAMINATION OF SURREBUTTAL EVIDENCE OF

11 SALINAS VALLEY PROTESTANTS

12 BY MR. MALONEY

13 MR. MALONEY: Do you think there would be any
14 difference in the percolation rates that you performed and
15 the percolation rates that Mr. Taghavi has reference to, Mr.
16 Pyle?

17 H.O. BROWN: I will permit one question.

18 MR. PYLE: I don't believe so, but I would like to see
19 analysis of both. I have heard just a critique without any
20 backup, so I would like to see an analysis of that.

21 H.O. BROWN: I am sorry, I can't hear you.

22 MR. PYLE: I don't believe there is going to be any
23 difference, any significant difference, in the percolation
24 but I haven't seen analysis presented by Mr. Taghavi to that
25 effect, so I would like to see that performed so I can make

1 that determination. Right now it is just a comment.

2 H.O. BROWN: We will accept the first part of your
3 question, but I am not going to bother this hearing with an
4 additional analysis.

5 That takes care of rebuttal. Now we have one more
6 issue, on this right here.

7 MR. MALONEY: Right.

8 H.O. BROWN: Ms. Lennihan.

9 MS. LENNIHAN: I am sorry, Mr. Brown, I didn't get an
10 opportunity to do any cross of Mr. Pyle. I wonder if I
11 might have a few questions, given the length of time already
12 taken.

13 H.O. BROWN: Yes, you may.

14 MS. LENNIHAN: Thank you.

15 ---oOo---

16 CROSS-EXAMINATION OF SURREBUTTAL OF
17 SALINAS VALLEY PROTESTANTS
18 BY EAST SIDE ALLIANCE
19 BY MS. LENNIHAN

20 MS. LENNIHAN: Just a few questions, Mr. Pyle.

21 My perspective on this may be somewhat simpler. Am I
22 correct in understanding that the analysis that you did that
23 is reflected in the Protestants', Salinas Valley
24 Protestants' Exhibit 50, is based on 110,000 irrigated acres
25 in Upper Valley and Forebay; is that correct?

1 MR. PYLE: That's correct.

2 MS. LENNIHAN: Are those acres that are currently
3 irrigated?

4 MR. PYLE: Yes. Those are currently listed as
5 irrigated on the assessor's rolls.

6 MS. LENNIHAN: Assessor's roll.

7 And the source for the demand number, the four
8 acre-foot per acre water duty number used, what is that?

9 MR. PYLE: That is the estimate based on what we
10 believe to be the maximum possibly pumped or used by any of
11 the Protestants for whatever crop they choose to use and
12 substantiated by the existing pumping, the GEMS data that
13 was just discussed here, the 178,000 acre-feet per year.

14 MS. LENNIHAN: When you use a water duty number in
15 your work at Stetson Engineers for vineyard operations, do I
16 remember correctly that you said it was about 1.5 acre-feet
17 per acre?

18 MR. PYLE: Something like that, yeah.

19 MS. LENNIHAN: So the four acre-foot per acre number
20 that you used in this analysis in Exhibit 50 is based upon a
21 max number it could be possible for those 110,000 acres; is
22 that correct?

23 MR. PYLE: That's correct. It was also my
24 understanding that we were performing this analysis for
25 really that amount of water used regardless of acreage. In

1 other words, it became vineyard then -- or if the vineyard
2 expanded and the acreage expanded and the water use was for
3 vineyards, then the water duty would drop but the acreage
4 would increase. But the amount of water pumped would remain
5 approximately the same.

6 MS. LENNIHAN: So if I understand you correctly, the
7 assumption that underlies, one of the assumptions that
8 underlies the analysis in Exhibit 50 is that there is an
9 entitlement to four acre-feet per acre regardless of the
10 type of use or number of acres; is that correct?

11 MR. PYLE: Entitlement, I don't know.

12 MR. MALONEY: Objection. Water rights' term.

13 MS. LENNIHAN: Let me rephrase it in order to conform
14 to the objection.

15 Is it correct then that one of the assumptions
16 underlying your analysis reflected in Exhibit 50 is that
17 there is a flat amount, flat assumption, four acre-feet per
18 acre, regardless of type of crop or the number of acres?

19 MR. PYLE: No. It wouldn't be four acre-feet
20 regardless of the crop or acreage. It would be probably
21 more accurate to say that the gross water pumped would be
22 440,000 acres roughly for this analysis only, regardless of
23 the acreage or crop.

24 MS. LENNIHAN: So the assumption of the water duty at
25 four acre-feet per acre or the assumption of 110,000 acres

1 either could vary fairly widely; is that correct?

2 MR. PYLE: They could within the constraints of the
3 total water pumped, yeah.

4 MS. LENNIHAN: You also testified this was based on
5 monthly numbers. And there is an issue raised about whether
6 that accurately reflected the timing of when water becomes
7 available in a watershed such as this.

8 Is a monthly analysis the best analysis to use for this
9 type of watershed?

10 MR. PYLE: I am not sure that it is. Unfortunately, we
11 normally do our surplus water analysis on a daily basis.
12 However, the Agency only provided this limited monthly data.
13 So this is all we had to work with.

14 MS. LENNIHAN: And one just final question.

15 You said that you did not take into consideration
16 anything that would occur with the water after it flowed
17 past Soledad. So did you not look at whether the water went
18 to percolation or ocean outflow or what happened to water
19 after it went past Soledad?

20 MR. PYLE: No. It simply defined that as surplus flow
21 available for storage.

22 MS. LENNIHAN: Thank you.

23 MR. MALONEY: Your Honor.

24 H.O. BROWN: Mr. Maloney.

25 MR. MALONEY: One comment to rehabilitate our witness.

1 There is an agreement between our office and the County of
2 Monterey which substantially reduces the irrigated acres in
3 the Upper Valley closer to the 40,000 level.

4 I am making an offer that such an agreement exists, and
5 I would be willing, in 1997, and I am more than willing to
6 put that into the record, basically our letter and the
7 Agency's letter of this hearing. I do not have that
8 agreement with me. But that agreement does show a lot of
9 the numbers of usage existing in 1997 was substantially
10 higher.

11 Why that becomes important for this record, it shows
12 that the actual pumping in the Upper Valley was much closer
13 to four, four and a quarter. As the record now stands, it
14 looks like it is 3.97. If that is of any value, I would
15 offer to put that in the record in terms of this hearing. I
16 am not sure that it is.

17 MR. O'BRIEN: First of all, totally inappropriate for
18 Mr. Maloney to give testimony as to what pumping is or
19 isn't.

20 Secondly, I have no idea what letter he is talking
21 about. He should have put it in the record in this
22 proceeding; he didn't. We have been through this sort of
23 situation before. I am going to object to whatever he is
24 proposing to do.

25 H.O. BROWN: Objection is sustained.

1 MR. MALONEY: Thank you, your Honor.

2 H.O. BROWN: Mr. Bezerra, I missed you. Do you have
3 any recross or rebuttal?

4 MR. BEZERRA: No, I do not, Mr. Brown.

5 H.O. BROWN: Thank you.

6 Now we are down to issue -- what is the report here?

7 MR. MALONEY: Mr. Hornbeck is one of the foremost
8 geography experts in the world. He is highly published,
9 highly reported. And we are going to call him as a witness
10 tomorrow. He has a unique series of knowledge. He used to
11 work for a company by the name of Bud Antle when he was
12 growing up. He and his father worked for Bud Antle for all
13 of his life in the fields. Mr. Hornbeck has his Ph.D. in
14 geography, and he has published numerous books and published
15 numerous articles.

16 What his field of study has been is California. This
17 particular book relates to California history and the
18 different changes that have occurred in California's history
19 since probably the 17th century up to the present time. We
20 are going to offer Mr. Hornbeck to give a more clear
21 explanation as to what the history of the Salinas Valley
22 is.

23 To that end instead of having that as the only witness,
24 I suggested to the other parties that we go through the book
25 and I make my offer of proof. And we only have a few pages

1 that we have reference to. But I believe it would be a
2 violation of the Copyright Act to put in Xeroxes of only the
3 -- our copies of only the appropriate pages. So I am
4 offering the whole book in evidence, and I will give a copy
5 of the book.

6 What Mr. Hornbeck would testify to, the first key issue
7 that he would testify, from all practical purposes the
8 missions of California were secularized in 1805 to 1810.
9 There is a whole series of calculations on which he bases
10 that. That becomes important for us to argue that the 19-
11 -- in connection with the arguments in connection with the
12 1930 case resolving rancho rights.

13 I would assume that you would object to that testimony
14 based on testimony -- the rulings throughout. However, he
15 does have that -- that is the first factual issue he would
16 testify to. The second factual issue that he would --

17 H.O. BROWN: Mr. Maloney, are you presuming to call Mr.
18 Hornbeck with regards to rebuttal testimony?

19 MR. MALONEY: Yes, rebuttal to Mr. -- I don't even want
20 to try. To Mr. -- to Tanimura & Antle's expert on history
21 that they have already put in the last 50 years. Mr.
22 Hornbeck knows the last 50 years of Salinas Valley like the
23 back of his hand. He used to pick lettuce for Bud Antle as
24 a child growing up.

25 H.O. BROWN: You want to call Mr. Hornbeck as a

1 rebuttal witness tomorrow morning?

2 MR. MALONEY: Yes. I don't think we need to go into
3 all of this, because if we just look at the pages in this
4 book that we talked about beforehand, that is all the
5 testimony that we would go into. I assume there will be an
6 objection to the 1805 testimony because it relates to the
7 fundamental issue of water rights that you don't want
8 evidence on.

9 H.O. BROWN: What stipulation are you suggesting may
10 circumvent Mr. Hornbeck's appearance?

11 MR. MALONEY: If we can put Pages 46 through 57, 58
12 through 59 and 60 through 61 into the record, I believe Mr.
13 O'Brien and -- the whole crowd has an objection to this
14 being put into the record.

15 H.O. BROWN: So we are not going to resolve this
16 tonight.

17 MR. MALONEY: Maybe we can.

18 MR. O'BRIEN: I think we can, Mr. Brown.

19 First of all, I don't have any desire to have to come
20 back tomorrow and to force Mr. Maloney to bring Prof.
21 Hornbeck back here. I don't think that is really the
22 issue.

23 The issue is, number one, relevance to this proceeding.
24 And, number two, this is proper rebuttal to anything
25 presented during anybody's case in chief? He referred to

1 Mr. Scalmanini's testimony, but this document does not rebut
2 anything that Mr. Scalmanini had to say. Furthermore, it is
3 not relevant in any key issue in this proceeding. It seems
4 to go in a general sort of way to issues relating to
5 historical water rights in the Salinas Valley, which I think
6 we have wisely steered away from in this proceeding.

7 So, I think that document should be excluded on those
8 grounds, and the testimony of Dr. Hornbeck excluded on those
9 grounds. Having him here to testify wouldn't change any of
10 those objections.

11 H.O. BROWN: How do you know what Mr. Hornbeck is going
12 to testify to? Is it just this book here, what is in the
13 book?

14 MR. MALONEY: He is going to testify to one thing.
15 First thing is that the mission ceased to exist as sectarian
16 institutions in 1805, in his opinion. Then he is going to
17 testify to --

18 H.O. BROWN: I don't see the relevance there.

19 MR. MALONEY: That is the basis on which we are going
20 to assert our water rights.

21 H.O. BROWN: It's not relevant to what we are doing,
22 Mr. Maloney.

23 MR. MALONEY: The second thing he's going to testify
24 to, contents of about six pages in this book that I made
25 reference to.

1 H.O. BROWN: The first issue is not relevant, the last
2 six pages that you --

3 MR. MALONEY: The six pages in this book that I made
4 reference to talking about --

5 H.O. BROWN: It is not relevant, the six pages 57, 58,
6 59 and 60?

7 MR. MALONEY: No. Pages 46 through 57, 58 through 59,
8 Page 60 through 61. I think they might be appropriate. The
9 Board is totally capable of disregarding irrelevant
10 evidence, to put it in. And then if you disregard it, fine.
11 If you don't, that is fine, too.

12 H.O. BROWN: I don't see what or whom you are rebutting
13 here.

14 MR. MALONEY: We believe --

15 H.O. BROWN: That is not Mr. Scalmanini.

16 MR. MALONEY: -- we are rebutting him. Because he only
17 offered a very narrow picture of what's actually gone on
18 down in the Salinas Valley. That is the purpose of having
19 Mr. Hornbeck testify. There is a much broader picture that
20 has to be thoroughly understood in order to appropriately
21 determine the issues raised in this application.

22 H.O. BROWN: I am sorry, Mr. Maloney, I don't agree
23 with that.

24 Do you have anything further on this?

25 Ms. Lennihan.

1 MS. LENNIHAN: I actually just was going to join in the
2 objection and note, as you may have already seen, Hearing
3 Officer Brown, that the content of the pages cited predates
4 substantially the testimony that was adduced from Mr.
5 Scalmanini.

6 H.O. BROWN: Okay.

7 Mr. Donlan.

8 MR. DONLAN: I join in that as well.

9 H.O. BROWN: Do you have any other witnesses?

10 MR. MALONEY: No. The only thing we would like to do
11 is make sure we get two or three more exhibits in, and then
12 we will be through.

13 H.O. BROWN: Can you get those exhibits in possibly
14 tonight?

15 MR. VIRSIK: It means that we will move to admit
16 exhibits that we have already used, the ones used on
17 rebuttal.

18 H.O. BROWN: Let's get our specific exhibits,
19 specifically then.

20 MR. VIRSIK: There are two exhibits. Specifically
21 Exhibits 6 and 50. Six was one we declined --

22 H.O. BROWN: Six?

23 MR. VIRSIK: Six is a listing of the southern land's
24 water consumption.

25 H.O. BROWN: Right. And Exhibit 50.

1 MR. VIRSIK: Fifty is Mr. Pyle's analysis.

2 H.O. BROWN: Okay.

3 MR. VIRSIK: I don't think I need to explain; those are
4 the two exhibits.

5 H.O. BROWN: You want those two additional exhibits
6 admitted into evidence.

7 Are there objections to 6 and 50 being admitted into
8 evidence?

9 MR. O'BRIEN: Subject to the objections I have
10 previously stated regarding Mr. Pyle's rebuttal testimony,
11 I don't have any further objections to 50, and I have no
12 objections to 6.

13 H.O. BROWN: You are on the record with that, Mr.
14 O'Brien.

15 Ms. Lennihan.

16 MS. LENNIHAN: I would just like to join in Mr.
17 O'Brien's objection.

18 MR. DONLAN: I believe I joined in that already.

19 H.O. BROWN: I am going to admit those two and give it
20 the weight of evidence.

21 MR. O'BRIEN: Mr. Brown, there is one more exhibit
22 matter I just wanted to clarify. I made a decision the
23 other day not to require Mr. Maloney and Mr. Virsik's
24 clients to hold over. We agreed that I could submit some
25 deposition transcript. Frankly, having had the opportunity

1 now to examine several of his witnesses today, I don't think
2 I any longer need to submit those transcripts. They are
3 already in the record, portions of a couple of those
4 transcripts.

5 So I am going to withdraw that particular request. Mr.
6 Bezerra I know had some interest in possibly submitting Ms.
7 Duflock's deposition, so I would defer to him on whether we
8 needed to submit that. I am going to withdraw my request.

9 H.O. BROWN: Thank you, Mr. O'Brien.

10 MR. VIRSIK: If you could clarify if you are talking
11 about everybody's -- all of the Salinas Valley Protestants'
12 exhibits that you have referenced. You are offering to
13 withdraw them all?

14 MR. O'BRIEN: The ones that have gone into evidence are
15 in the record. I was going to additionally submit full
16 copies of the depositions of Mr. Indelicato, Mr. Petrovic,
17 Ms. Duflock and Michel Orradre.

18 I no longer feel the need to submit the full deposition
19 transcripts, but I would like for the documents that are in
20 the record, have been admitted as exhibits already, to
21 remain in the record.

22 H.O. BROWN: All right.

23 Mr. Bezerra.

24 MR. BEZERRA: Yes, Mr. Brown. We would like to submit
25 the entire deposition of Margaret Duflock as an

1 exhibit. And we will mark it as Rosenberg 19. I do not
2 have it here. I can get it and provide the parties with
3 copies. And it would be subject to whether or not Mr.
4 Virsik or Mr. Maloney agree to accept that. We obviously
5 don't have the witness here to testify to that.

6 H.O. BROWN: Tell me again what you wish to do.

7 MR. BEZERRA: The deposition of Ms. Duflock contains
8 some discussion of Rosenberg Ranch and Ms. Duflock's
9 understanding of what rights she may or may not have in that
10 ranch. I believe there is excerpts of the deposition in the
11 record, but we want to have the entire deposition in so that
12 we can refer to it in our closing argument brief.

13 MR. VIRSIK: May I respond to the statement?

14 H.O. BROWN: Yes, Mr. Virsik.

15 MR. VIRSIK: I don't have any problem with Mr.
16 O'Brien's partial withdrawal, if I may call it that, of the
17 entire exhibits. I am, however, going to object to putting
18 in the entire transcript of Mrs. Duflock. Of course, Mr.
19 Rosenberg had the opportunity to append that as his own
20 exhibit if, in fact, he wanted to do that. The Agency did
21 submit a portion. He can have that portion.

22 I understand he wants to do that, but procedurally I am
23 not sure what he gets to if I somehow waive it.

24 H.O. BROWN: Your concern --

25 MR. VIRSIK: I am done, sir.

1 H.O. BROWN: Your concern with the identification of
2 the Rosenberg properties?

3 MR. BEZERRA: Yes.

4 H.O. BROWN: You have really covered that issue.

5 MR. BEZERRA: Thank you, Mr. Brown.

6 The reason I rise on this point is that when Ms.
7 Duflock was excused yesterday, I essentially thought I
8 didn't need to object to that or to say anything about that
9 because the entire deposition transcript was going to come
10 in. It is not at this point -- I think in light of today in
11 particular and the legends and that sort of thing, I think
12 that it's probably accurate. So if Mr. Virsik is willing to
13 stipulate that is probably sufficient.

14 MR. VIRSIK: He is withdrawing?

15 MR. BEZERRA: I will withdraw the offer of that
16 exhibit.

17 H.O. BROWN: Fine.

18 Does that cover all the exhibits now? I think we are
19 covered.

20 MR. VIRSIK: I believe it does.

21 MR. DONLAN: I will be sending Mr. Virsik a letter
22 regarding the direct oral dismissal of Mr. Scalmanini to
23 conform it with the, I guess, the modified version of his
24 written testimony, and I will do that within the next day or
25 two. And I assume we are on the same page on that so I

1 don't anticipate any problem.

2 MS. KATZ: If we can just get that in the record before
3 it closes.

4 MR. VIRSIK: The only issue is to make sure we don't
5 have any further problems with the Rosenbergs, to make sure
6 that all -- and actually with Ms. Lennihan's clients in a
7 separate but related issue.

8 We just want to make sure that all exhibits that do go
9 in contain the legends and footnotes that we have spoken of.
10 If you keep the record open so we make sure we do that in
11 some semilegible way. I think that is the only other
12 thing.

13 MR. DONLAN: When do you anticipate closing the record?

14 H.O. BROWN: We will get to that.

15 MR. DONLAN: I would like to remind Mr. Maloney and Mr.
16 Virsik that they had promised color copies of these
17 exhibits. I would like to --

18 MR. VIRSIK: Those will be provided through Mr. Pyle's
19 office.

20 MR. MALONEY: And revised Exhibit 1A.

21 MR. VIRSIK: Mr. Maloney reminds me there appears to be
22 one matter, one ruling that was not resolved, a question of
23 withdrawing, if I understand the question, of withdrawing
24 the --

25 Was it the reservoir questions? If I can let --

1 MR. MALONEY: The reservoir questions were going to
2 have copies -- my understanding we were going to have copies
3 after lunch. I might have misunderstood that. I would
4 prefer we wait until -- and not put the pressure on the
5 reporter, of her sending them to us and we making
6 appropriate comments after we have a complete transcript.

7 These are the reservoir questions raised in
8 cross-examination of Mr. Merrill. I may be confused on
9 this, but I thought we were going to look at transcripts on
10 that. We were very concerned about the language in that
11 transcript, and I can't exactly remember what it was at the
12 time.

13 MR. O'BRIEN: Mr. Brown.

14 H.O. BROWN: Mr. O'Brien.

15 MR. O'BRIEN: I believe the way we resolved that, I
16 stipulated to withdraw my question as to whether there were
17 permits for the reservoir. As I understood that, that was
18 resolved.

19 H.O. BROWN: That is correct. That is my recollection.

20 MR. MALONEY: I didn't agree. I wanted to see the
21 transcript, the questions that followed after that
22 statement. I am not sure what was actually said in that. I
23 know that's a very great deal of concern to our client.

24 H.O. BROWN: He has withdrawn it. It is not an issue.

25 MR. MALONEY: The questions that follow afterwards are

1 what I am concerned about. That is why I want to see the
2 transcript

3 MR. O'BRIEN: I offered to withdraw, and that is what I
4 did. That one question and answer was stricken, whether
5 permits for the reservoir. I am not going to restrike
6 anything else. It seems to me that he didn't object at the
7 time. We ought to just close out the record. I think we
8 have gone the extra mile in trying to accommodate Mr.
9 Maloney's concern on this issue.

10 MR. MALONEY: I didn't object at the time, as I stated
11 this morning, I had the right to cross-examine on the
12 issue. That is the problem, that this particular piece of
13 information is going to go on the Internet for the whole
14 world. Suggestions coming from the County of Monterey that
15 we are doing something illegal. We don't think we are doing
16 something illegal. We can put on evidence to prove that.

17 H.O. BROWN: I am satisfied with Mr. O'Brien's
18 withdrawal of the question.

19 MR. MALONEY: Can I ask one question? Will that be
20 marked in the transcript, exactly where the withdrawal
21 occurred?

22 (Discussion held off record.)

23 MR. MALONEY: So we can enter into a stipulation so it
24 doesn't appear in the public transcript. I was not allowed
25 to cross-examine on that.

1 H.O. BROWN: Mr. O'Brien.

2 MR. O'BRIEN: I honestly don't know what the problem
3 is. It has been stricken from the record. It can't be
4 cited in this or any other legal proceeding. What someone
5 decides to post on the Internet, we have no control over
6 that. I don't think there is anything else we can do about
7 this.

8 H.O. BROWN: I agree. I agree. That is my ruling.

9 Let's move on.

10 In conclusion then, I was going to allow closing
11 argument. But I have changed my mind on that. We will have
12 any closing argument will be included in the submission of
13 briefs. I will allow written briefs to be submitted, six
14 copies of the brief, with a proof of service must be
15 received by the Board and served on the parties by 5:00 p.m.
16 Friday, August 25th.

17 Persons who want to file a response brief may do so.
18 Six copies of the response brief with a proof of service
19 must be received by the Board and served on the parties by
20 5:00 p.m. Friday September 15th.

21 And the administrative record will close at 5:00 p.m.
22 Friday, September 15th.

23 The Board will take this matter under submission. All
24 parties who participated in this hearing will be sent notice
25 of the Board's decision on this matter and any forthcoming

1 Board meeting during which this matter will be
2 considered.

3 I would like to thank all of you for the fine way you
4 have conducted yourself, the professionalism of the
5 attorneys and the witnesses.

6 This hearing is adjourned.

7 MR. O'BRIEN: Thank you, Mr. Brown.

8 MR. MALONEY: Thank you, your Honor.

9 MS. LENNIHAN: Thank you, Mr. Brown.

10 MR. BEZERRA: Thank you, Mr. Brown.

11 MR. DONLAN: Thank you, Mr. Brown.

12 MR. VIRSIK: Thank you, Mr. Brown.

13 (Hearing adjourned at 4:50 p.m.)

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